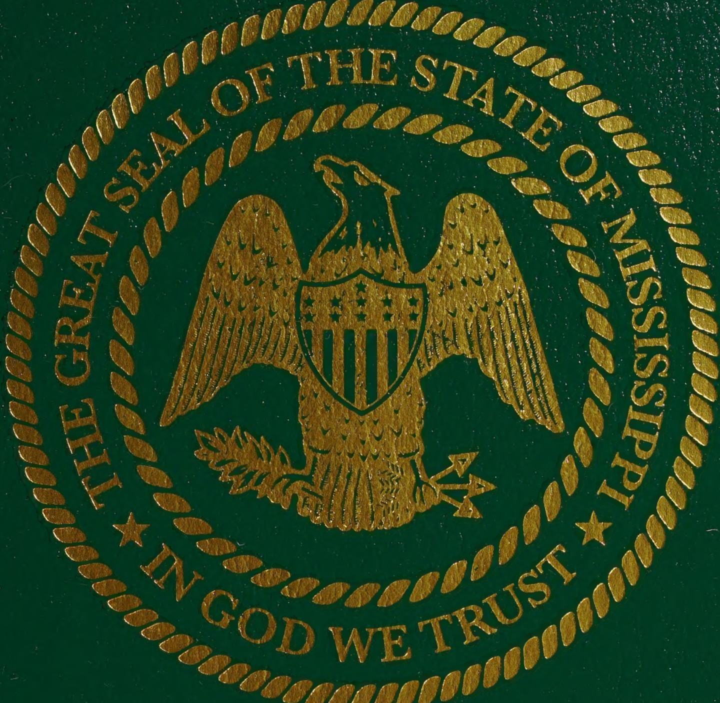

MISSISSIPPI CODE 1972
Annotated

Regulation of Trade, Commerce
and Investments

UNIFORM COMMERCIAL CODE

(§ 75-9-101 to
§ 75-11-108)

Title 75

TABLE OF CONTENTS

VOLUME 16B

TITLE 75 (Cont'd)

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAP. BEGINNING SECTION

9. Uniform Commercial Code — Secured Transactions . . . 75-9-101
10. Uniform Commercial Code — Effective Date and Repealer 75-10-101
11. Uniform Commercial Code — Effective Date and Transition Provisions 75-11-101

TITLE 75 — Continued in Volume 16C

Digitized by the Internet Archive
in 2021 with funding from
Public.Resource.Org

https://archive.org/details/mississippicode16stat_1

MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME SIXTEEN B

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

§§ 75-9-1 to 75-11-108

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2016 REGULAR AND
1ST AND 2ND EXTRAORDINARY LEGISLATIVE SESSIONS

LexisNexis®

QUESTIONS ABOUT THIS PUBLICATION?

For EDITORIAL QUESTIONS concerning this publication, or REPRINT PERMISSION, please call: 800-833-9844

For CUSTOMER SERVICE ASSISTANCE concerning replacement pages, shipments, billing or other matters, please call:

Customer Service Department at	800-833-9844
Outside the United States and Canada	518-487-3000
FAX	518-487-3584

For INFORMATION ON OTHER MATTHEW BENDER PUBLICATIONS, please call:

Your account manager or	800-223-1940
Outside the United States and Canada	518-487-3000

Copyright © 1973—2016
by
THE STATE OF MISSISSIPPI

All rights reserved.

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc. used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

4455811

ISBN 978-1-5221-0179-6 (Volume 16B)
ISBN 978-0-3270-9628-3 (Code set)

LexisNexis®

Matthew Bender & Company, Inc.

701 E. Water Street, Charlottesville, VA 22902-5389

www.lexisnexis.com

(Pub. 44510)

PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2016 Replacement Volume 16B of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume and the 1981 and 2002 Replacement Volume 16A, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2016 Regular and 1st and 2nd Extraordinary Legislative Sessions.

This volume contains the text of Chapters 9 through 11 of Title 75 of the Mississippi Code of 1972 Annotated, as amended through the 2016 Regular and 1st and 2nd Extraordinary Legislative Sessions.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22906-5389.

September 2016 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— Index
— Joint Legislative Committee Notes
— Judicial Decisions
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Source Notes
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

GENERAL OUTLINE OF TITLES AND CHAPTERS

CONSTITUTION OF THE UNITED STATES .... Volume 1
CONSTITUTION OF MISSISSIPPI .... Volume 1

TITLE 1. LAWS AND STATUTES

			Beginning Section
CHAPTER	1.	Code of 1972	1-1-1
	3.	Construction of Statutes	1-3-1
	5.	Session Laws and Journals	1-5-1

TITLE 3. STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

CHAPTER	1.	State Sovereignty Commission [Repealed]	3-1-1
	3.	State Boundaries, Holidays, and State Emblems	3-3-1
	5.	Acquisition of Land by United States Government	3-5-1
	7.	Compact for a Balanced Budget	3-7-1

TITLE 5. LEGISLATIVE DEPARTMENT

CHAPTER	1.	Legislature	5-1-1
	3.	Legislative Committees	5-3-1
	5.	Interstate Cooperation	5-5-1
	7.	Lobbying [Repealed]	5-7-1
	8.	Lobbying Law Reform Act of 1994	5-8-1
	9.	Agency Review	5-9-1
	11.	Abolishment of Agencies	5-11-1

TITLE 7. EXECUTIVE DEPARTMENT

CHAPTER	1.	Governor	7-1-1
	3.	Secretary of State	7-3-1
	5.	Attorney General	7-5-1
	7.	State Fiscal Officer; Department of Audit	7-7-1
	9.	State Treasurer	7-9-1
	11.	Secretary of State; Land Records	7-11-1
	13.	Mississippi Administrative Reorganization Act	7-13-1
	15.	Executive Branch Reorganization Study Commission [Repealed]	7-15-1
	17.	Mississippi Executive Reorganization Act of 1989	7-17-1

TITLE 9. COURTS

			Beginning Section
CHAPTER	1.	Provisions Common to Courts	9-1-1
	3.	Supreme Court	9-3-1
	4.	Court of Appeals of the State of Mississippi	9-4-1
	5.	Chancery Courts	9-5-1
	7.	Circuit Courts	9-7-1
	9.	County Courts	9-9-1
	11.	Justice Courts	9-11-1
	13.	Court Reporters and Court Reporting	9-13-1
	15.	Judicial Council [Repealed]	9-15-1
	17.	Court Administrators	9-17-1
	19.	Commission on Judicial Performance	9-19-1
	21.	Administrative Office of Courts	9-21-1
	23.	Drug Courts	9-23-1
	25.	Veterans Treatment Courts	9-25-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE

CHAPTER	1.	Practice and Procedure Provisions Common to Courts	11-1-1
	3.	Practice and Procedure in Supreme Court	11-3-1
	5.	Practice and Procedure in Chancery Courts	11-5-1
	7.	Practice and Procedure in Circuit Courts	11-7-1
	9.	Practice and Procedure in County Courts and Justice Courts	11-9-1
	11.	Venue of Actions	11-11-1
	13.	Injunctions	11-13-1
	15.	Arbitration and Award	11-15-1
	17.	Suits to Confirm Title or Interest and to Remove Clouds on Title	11-17-1
	19.	Ejectment	11-19-1
	21.	Partition of Property	11-21-1
	23.	Trial of Right of Property	11-23-1
	25.	Unlawful Entry and Detainer	11-25-1
	27.	Eminent Domain	11-27-1
	29.	Sequestration	11-29-1
	31.	Attachment in Chancery Against Nonresident, Absent or Absconding Debtors	11-31-1
	33.	Attachment at Law Against Debtors	11-33-1
	35.	Garnishment	11-35-1
	37.	Replevin	11-37-1
	38.	Claim and Delivery	11-38-1
	39.	Quo Warranto	11-39-1
	41.	Mandamus; Prohibition	11-41-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE (Cont'd)

Beginning Section
43. Habeas Corpus 11-43-1
44. Compensation to Victims of Wrongful Conviction and Imprisonment 11-44-1
45. Suits by and Against the State or Its Political Subdivisions 11-45-1
46. Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees 11-46-1
47. Lis Pendens 11-47-1
49. Rights and Duties of Attorneys, Generally 11-49-1
51. Appeals 11-51-1
53. Costs 11-53-1
55. Litigation Accountability Act of 1988 11-55-1
57. Structured Settlements 11-57-1
59. Uniform Interstate Depositions and Discovery Act 11-59-1
61. Mississippi Religious Freedom Restoration Act 11-61-1
62. Protecting Freedom of Conscience from Government Discrimination Act 11-62-1
63. Application of Foreign Law 11-63-1
65. Enforcement of Federal Laws, Orders, Rules 11-65-1
67. Asset Forfeiture Task Force Act 11-67-1

TITLE 13. EVIDENCE, PROCESS AND JURIES

CHAPTER 1. Evidence 13-1-1
3. Process, Notice, and Publication 13-3-1
5. Juries 13-5-1
7. State Grand Jury Act 13-7-1

TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1. Limitation of Actions 15-1-1
3. Prevention of Frauds 15-3-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

CHAPTER 1. Zoning, Planning and Subdivision Regulation 17-1-1
2. Building Codes 17-2-1
3. Promotion of Trade, Conventions and Tourism 17-3-1
5. Jails, Waterworks and Other Improvements 17-5-1
7. Removal of Local Governments in Emergencies 17-7-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES (Cont'd)

Beginning Section
9. Lease of Mineral Lands other than Sixteenth Section or "In Lieu" Lands 17-9-1
11. Gulf Regional District Law 17-11-1
13. Interlocal Cooperation of Governmental Units 17-13-1
15. Human Resource Agencies 17-15-1
17. Solid Wastes Disposal 17-17-1
18. Mississippi Hazardous Waste Facility Siting Act of 1990 17-18-1
19. Appropriations to Planning and Development Districts 17-19-1
21. Finance and Taxation 17-21-1
23. Rural Fire Truck Acquisition Assistance Programs 17-23-1
25. General Provisions Relating to Counties and Municipalities 17-25-1
27. Municipal Historical Hamlet Act 17-27-1
29. Mississippi Entertainment District Act 17-29-1

TITLE 19. COUNTIES AND COUNTY OFFICERS

Chapter 1. County Boundaries 19-1-1
2. County Government Reorganization Act 19-2-1
3. Board of Supervisors 19-3-1
4. County Administrator 19-4-1
5. Health, Safety and Public Welfare 19-5-1
7. Property and Facilities 19-7-1
9. Finance and Taxation 19-9-1
11. County Budget 19-11-1
13. Contracts, Claims and Transaction of Business with Counties 19-13-1
15. Records and Recording 19-15-1
17. County Auditors 19-17-1
19. Constables 19-19-1
21. Coroners 19-21-1
23. County Attorneys 19-23-1
25. Sheriffs 19-25-1
27. Surveyors and Surveys 19-27-1
29. Local and Regional Railroad Authorities 19-29-1
31. Public Improvement Districts 19-31-1

TITLE 21. MUNICIPALITIES

Chapter 1. Classification, Creation, Abolition, and Expansion 21-1-1

TITLE 21. MUNICIPALITIES (Cont'd)

		Beginning Section
3.	Code Charters	21-3-1
5.	Commission Form of Government	21-5-1
7.	Council Form of Government	21-7-1
8.	Mayor-Council Form of Government	21-8-1
9.	Council-Manager Plan of Government	21-9-1
11.	Municipal Elections [Repealed]	21-11-1
13.	Ordinances	21-13-1
15.	Officers and Records	21-15-1
17.	General Powers	21-17-1
19.	Health, Safety, and Welfare	21-19-1
21.	Police and Police Departments	21-21-1
23.	Municipal Courts	21-23-1
25.	Fire Departments and Fire Districts	21-25-1
27.	Public Utilities and Transportation	21-27-1
29.	Employees' Retirement and Disability Systems	21-29-1
31.	Civil Service	21-31-1
33.	Taxation and Finance	21-33-1
35.	Municipal Budget	21-35-1
37.	Streets, Parks and Other Public Property	21-37-1
38.	Acquisition or Lease of Real Property from Federal Government for Parks, Recreation, and Tourism	21-38-1
39.	Contracts and Claims	21-39-1
41.	Special Improvements	21-41-1
43.	Business Improvement Districts	21-43-1
45.	Tax Increment Financing	21-45-1
47.	Delta Natural Gas District	21-47-1

TITLE 23. ELECTIONS

CHAPTER	1.	Qualification of Candidates and Registration of Political Parties [Repealed]	23-1-1
	3.	Corrupt Practices [Repealed]	23-3-1
	5.	Registration and Elections [Repealed]	23-5-1
	7.	Voting Machines and Electronic Voting System [Repealed]	23-7-1
	9.	Absentee Ballot [Repealed]	23-9-1
	11.	Presidential Election Law [Repealed]	23-11-1
	13.	Mississippi Presidential Preference Primary and Delegate Selection Law [Repealed]	23-13-1
	15.	Mississippi Election Code	23-15-1
	17.	Amendments to Constitution by Voter Initiative	23-17-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

Beginning Section

CHAPTER 1. Public Officers; General Provisions 25-1-1
3. Salaries and Compensation 25-3-1
4. Ethics in Government 25-4-1
5. Removals From Office 25-5-1
7. Fees 25-7-1
9. Statewide Personnel System 25-9-1
11. Social Security and Public Employees' Retirement and Disability Benefits 25-11-1
13. Highway Safety Patrol Retirement System 25-13-1
14. Government Employees Deferred Compensation Plan Law 25-14-1
15. Group Insurance for Public Employees 25-15-1
17. Cafeteria Fringe Benefit Plans 25-17-1
19. Public Employer-Assisted Housing Program 25-19-1
31. District Attorneys 25-31-1
32. Public Defenders 25-32-1
33. Notaries Public 25-33-1
41. Open Meetings 25-41-1
43. Administrative Procedures 25-43-1.101
45. Permit and Licensing Procedures 25-45-1
51. State Depository for Public Documents 25-51-1
53. Mississippi Department of Information Technology Services (MDITS) 25-53-1
55. Lost Records 25-55-1
57. Destruction of Records [Repealed] 25-57-1
58. Geographic Information System 25-58-1
59. Archives and Records Management 25-59-1
60. Local Government Records 25-60-1
61. Public Access to Public Records 25-61-1
63. Digital Signature Act 25-63-1
65. Agency, University and Community/Junior College Internal Auditing Program 25-65-1

TITLE 27. TAXATION AND FINANCE

CHAPTER 1. Assessors and County Tax Collectors 27-1-1
3. Department of Revenue 27-3-1
4. Board of Tax Appeals 27-4-1
5. Motor Vehicle Comptroller 27-5-1
7. Income Tax and Withholding 27-7-1
8. Mississippi S Corporation Income Tax Act 27-8-1
9. Estate Tax 27-9-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

Beginning Section

10. Uniform Estate Tax Apportionment Act 27-10-1
11. Amusement Tax [Repealed] 27-11-1
13. Corporation Franchise Tax 27-13-1
15. Statewide Privilege Taxes 27-15-1
17. Local Privilege Taxes 27-17-1
19. Motor Vehicle Privilege and Excise Taxes 27-19-1
21. Finance Company Privilege Tax 27-21-1
23. Chain Store Privilege Tax [Repealed] 27-23-1
25. Severance Taxes 27-25-1
27. Vending and Amusement Machine Taxes 27-27-1
29. Ad Valorem Taxes—General Provisions 27-29-1
31. Ad Valorem Taxes—General Exemptions 27-31-1
33. Ad Valorem Taxes—Homestead Exemptions 27-33-1
35. Ad Valorem Taxes—Assessment 27-35-1
37. Ad Valorem Taxes—Payments in Lieu of Taxes 27-37-1
38. Ad Valorem Taxes—Telecommunications Tax Reform 27-38-1
39. Ad Valorem Taxes—State and Local Levies 27-39-1
41. Ad Valorem Taxes—Collection 27-41-1
43. Ad Valorem Taxes—Notice of Tax Sale to Owners and Lienors 27-43-1
45. Ad Valorem Taxes—Redemption of Land Sold for Taxes 27-45-1
47. Ad Valorem Taxes—Assignment of Tax Liens .. 27-47-1
49. Ad Valorem Taxes—Insolvencies 27-49-1
51. Ad Valorem Taxes—Motor Vehicles 27-51-1
53. Ad Valorem Taxes—Mobile Homes 27-53-1
55. Gasoline and Motor Fuel Taxes 27-55-1
57. Tax on Oils 27-57-1
59. Liquefied Compressed Gas Tax 27-59-1
61. Interstate Commercial Carriers Motor Fuel Tax 27-61-1
63. Motor Vehicle Fueling Centers [Repealed] 27-63-1
65. Sales Tax 27-65-1
67. Use or Compensating Taxes 27-67-1
68. Uniform Sales and Use Tax Administration Law 27-68-1
69. Tobacco Tax 27-69-1
70. Nonsettling-Manufacturer Cigarette Fee 27-70-1
71. Alcoholic Beverage Taxes 27-71-1
73. Tax Refunds 27-73-1
75. Reciprocal Collection of Taxes 27-75-1
77. Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue 27-77-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

Beginning Section
101. Annual Reports by Departments of Government, State-Supported Institutions and Taxing Entities 27-101-1
103. State Budget 27-103-1
104. State Fiscal Affairs 27-104-1
105. Depositories 27-105-1
106. Iran Divestment Act of 2015 27-106-1
107. Disaster Relief 27-107-1
109. Cruise Vessels 27-109-1
111. Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018] 27-111-1
113. Facilitating Business Rapid Response to State Declared Disasters Act of 2015 27-113-1

TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY

CHAPTER 1. Public Lands 29-1-1
3. Sixteenth Section and Lieu Lands 29-3-1
5. Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion 29-5-1
7. Mineral Leases of State Lands 29-7-1
9. Inventories of State Property 29-9-1
11. Energy Conservation in Public Buildings [Repealed] 29-11-1
13. Flood Insurance for State-Owned Buildings 29-13-1
15. Public Trust Tidelands 29-15-1
17. State Agency Repair and Renovation 29-17-4

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS

CHAPTER 1. General Provisions Relative to Public Contracts 31-1-1
3. State Board of Public Contractors 31-3-1
5. Public Works Contracts 31-5-1
7. Public Purchases 31-7-1
8. Acquisition of Public Buildings, Facilities, and Equipment Through Rental Contracts 31-8-1
9. Surplus Property Procurement Commission 31-9-1
11. State Construction Projects 31-11-1
13. Validation of Public Bonds 31-13-1
15. Refunding Bonds 31-15-1
17. State Bonds; Retirement of Bonds 31-17-1
18. Variable Rate Debt Instruments 31-18-1
19. Public Debts 31-19-1

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS (Cont'd)

Beginning Section
21. Registered Bonds 31-21-1
23. Mississippi Private Activity Bonds Allocation Act 31-23-1
25. Mississippi Development Bank Act 31-25-1
27. Mississippi Bond Refinancing Act 31-27-1
29. Institute for Technology Development 31-29-1
31. Mississippi Telecommunications Conference and Training Center 31-31-1

TITLE 33. MILITARY AFFAIRS

CHAPTER 1. Definitions and General Provisions Relating to the Military Forces 33-1-1
3. Commander in Chief, Military Department, and Governor's Staff 33-3-1
4. Mississippi Military Family Relief Fund 33-4-1
5. The Militia and Mississippi State Guard 33-5-1
7. National Guard 33-7-1
9. Property and Finances 33-9-1
11. Training Facilities 33-11-1
13. Mississippi Code of Military Justice 33-13-1
15. Emergency Management and Civil Defense 33-15-1

TITLE 35. WAR VETERANS AND PENSIONS

CHAPTER 1. State Veterans Affairs Board 35-1-1
3. War Veterans; Miscellaneous Provisions 35-3-1
5. Guardianship of Veterans 35-5-1
7. Veterans' Home Purchase Law 35-7-1
9. Pensions [Repealed] 35-9-1

TITLE 37. EDUCATION

CHAPTER 1. State Board of Education 37-1-1
3. State Department of Education 37-3-1
4. Mississippi Community College Board 37-4-1
5. County Boards of Education and Superintendents 37-5-1
6. Mississippi Uniform School Law 37-6-1
7. School Districts; Boards of Trustees of School Districts 37-7-1
9. District Superintendents, Principals, Teachers, and Other Employees 37-9-1
11. General Provisions Pertaining to Education 37-11-1

TITLE 37. EDUCATION (Cont'd)

Beginning Section
12. Mississippi Student Religious Liberties Act of 2013 ... 37-12-1
13. Curriculum; School Year and Attendance ... 37-13-1
14. Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Act of 2007 ... 37-14-1
15. Public Schools; Records, Enrollment and Transfer of Pupils ... 37-15-1
16. Statewide Testing Program ... 37-16-1
17. Accreditation of Schools ... 37-17-1
18. Superior-Performing, Exemplary and School At-Risk Schools Programs ... 37-18-1
19. Teacher Compensation ... 37-19-1
20. Remedial Education ... 37-20-1
21. Early Childhood Education ... 37-21-1
22. State Funds for School Districts ... 37-22-1
23. Exceptional Children ... 37-23-1
24. Mississippi Youth Concussion Law ... 37-24-1
25. Driver Education and Training ... 37-25-1
26. State Court Education Fund ... 37-26-1
27. Agricultural High Schools ... 37-27-1
28. Mississippi Charter Schools Act of 2013 ... 37-28-1
29. Junior Colleges ... 37-29-1
31. Vocational Education ... 37-31-1
33. Civilian Vocational Rehabilitation ... 37-33-1
35. Adult Education ... 37-35-1
37. Public Schools; Accounting and Auditing ... 37-37-1
39. Public Schools; Purchases ... 37-39-1
41. Transportation of Pupils ... 37-41-1
43. Textbooks ... 37-43-1
45. State Aid to Public Schools ... 37-45-1
47. State Aid for Construction of School Facilities 37-47-1
49. Loans to Students ... 37-49-1
51. Financial Assistance to Children Attending Nonsectarian Private Schools ... 37-51-1
53. Summer Normals ... 37-53-1
55. School Libraries ... 37-55-1
57. Taxation ... 37-57-1
59. School Bonds and Obligations ... 37-59-1
61. Expenditure of School Funds; Budgets ... 37-61-1
63. Educational Television ... 37-63-1
65. Closing of Public Schools and Institutions of Higher Learning ... 37-65-1
67. Distance Learning Collaborative Act of 2016 ... 37-67-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
101.	Institutions of Higher Learning; General Provisions	37-101-1
102.	Off-campus Instructional Programs	37-102-1
103.	Residency and Fees of Students Attending or Applying for Admission to Educational Institutions	37-103-1
104.	Mississippi Educational Facilities Authority Act for Private, Nonprofit Institutions of Higher Learning	37-104-1
105.	Campuses and Streets of State Institutions of Higher Learning	37-105-1
106.	Post-Secondary Education Financial Assistance	37-106-1
107.	Scholarships for Children of Deceased or Disabled Law Enforcement Officers or Firemen [Repealed]	37-107-1
108.	Scholarships for Children of Prisoners of War or Men Missing in Action	37-108-1
109.	Medical Education Loans and Scholarships. [Repealed]	37-109-1
110.	Mississippi Public Management Graduate Intern Program	37-110-1
111.	Fraternities, Sororities and Other Societies	37-111-1
113.	Mississippi State University of Agriculture and Applied Science	37-113-1
115.	University of Mississippi	37-115-1
117.	Mississippi University for Women	37-117-1
119.	University of Southern Mississippi	37-119-1
121.	Alcorn State University	37-121-1
123.	Delta State University	37-123-1
125.	Jackson State University	37-125-1
127.	Mississippi Valley State University	37-127-1
129.	Nursing Schools and Scholarships	37-129-1
131.	Teachers Demonstration and Practice Schools	37-131-1
132.	Student Teachers	37-132-1
133.	Technical Institutes	37-133-1
135.	Compacts with Other States	37-135-1
137.	School Asbestos Hazard Elimination Act [Repealed]	37-137-1
138.	Asbestos Abatement Accreditation and Certification Act	37-138-1
139.	Mississippi School for Mathematics and Science	37-139-1
140.	Mississippi School of the Arts	37-140-1
141.	The University Research Center Act of 1988	37-141-1

TITLE 37. EDUCATION (Cont'd)

Beginning Section
143. Omnibus Loan or Scholarship Act of 1991 37-143-1
144. Mississippi Rural Physicians Scholarship Program 37-144-1
145. Mississippi Opportunity Loan Program Act 37-145-1
146. Mississippi Rural Dentists Scholarship Program 37-146-1
147. Mississippi University Research Authority Act 37-147-1
148. Strengthening Mississippi Academic Research Through Business Act 37-148-1
149. Mississippi Teacher Center 37-149-1
151. Mississippi Accountability and Adequate Education Program Act of 1997 37-151-1
152. Commission on Restructuring the Mississippi Adequate Education Program (MAEP) 37-152-1
153. Workforce Training and Education Consolidation Act 37-153-1
154. State Longitudinal Data System 37-154-1
155. College Savings Plans of Mississippi 37-155-1
157. Student Tuition Assistance 37-157-1
159. Mississippi Teacher Scholarship Programs 37-159-1
160. Teach for America Act 37-160-1
161. Mississippi Education Reform Act of 2006 37-161-1
163. Education Achievement Council 37-163-1
165. Conversion Charter School Act of 2010 37-165-1
167. New Start School Program 37-167-1
169. Mississippi Autism Advisory Committee 37-169-1
171. Use of School Property by Public for Recreation and Sports 37-171-1
173. Dyslexia Therapy Scholarship for Students with Dyslexia Program 37-173-1
175. Mississippi Speech-Language Therapy Scholarship for Students with Speech-Language Impairments Program 37-175-1
177. Literacy-Based Promotion Act 37-177-1
179. Districts of Innovation 37-179-1
181. Equal Opportunity for Students with Special Needs Act 37-181-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY

Chapter 1. State Law Library; Legislative Reference Bureau 39-1-1
3. Libraries and Library Commission 39-3-1
5. Archives and History 39-5-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY (Cont'd)

Beginning Section
7. Antiquities 39-7-1
9. Trusts to Promote Arts and Sciences 39-9-1
11. Mississippi Arts Commission 39-11-1
13. Historic Preservation Districts and Landmarks 39-13-1
15. Municipal and County Funds to Support the Arts 39-15-1
17. Mississippi Sports Hall of Fame and Dizzy Dean Museum 39-17-1
19. Museum Unclaimed Property Act 39-19-1
21. Mississippi Craft Center 39-21-1
23. Mississippi Children's Museum 39-23-1
25. Mississippi Arts and Entertainment Center 39-25-1
27. Mississippi Blues Commission 39-27-1
29. Mississippi Commission on the Holocaust 39-29-1
31. Mississippi Bicentennial Celebration Commission [Repealed effective July 1, 2019] 39-31-1
32. Mississippi Country and Western Music Commission 39-32-1
33. Mississippi Country Music Trail 39-33-1
35. Mississippi Sesquicentennial of the American Civil War Commission 39-35-1
37. Mississippi Heritage, History and Culture Trail Program 39-37-1
39. Mississippi Civil Rights Museum Advisory Commission 39-39-1

TITLE 41. PUBLIC HEALTH

Chapter 1. Mississippi Department of Public Health [Repealed] 41-1-1
3. State Board of Health; Local Health Boards and Officers 41-3-1
4. Department of Mental Health 41-4-1
5. Governing Authorities for State Hospitals and Institutions 41-5-1
7. Hospital and Health Care Commissions 41-7-1
9. Regulation of Hospitals; Hospital Records 41-9-1
10. Medical Records 41-10-1
11. State Charity Hospitals; Mississippi Children's Rehabilitation Center 41-11-1
13. Community Hospitals 41-13-1
15. Department for the Prevention of Insanity [Repealed] 41-15-1
17. State Mental Institutions 41-17-1

TITLE 41. PUBLIC HEALTH (Cont'd)

Beginning Section
19. Facilities and Services for Individuals with an Intellectual Disability or Mental Illness 41-19-1
21. Individuals with Mental Illness or an Intellectual Disability 41-21-1
22. Hemophilia 41-22-1
23. Contagious and Infectious Diseases; Quarantine 41-23-1
24. Sickle Cell Testing Program 41-24-1
25. Disinfection and Sanitation of Buildings and Premises 41-25-1
26. Mississippi Safe Drinking Water Act of 1997 ... 41-26-1
27. Mosquito Control 41-27-1
28. Diabetes 41-28-1
29. Poisons, Drugs and Other Controlled Substances 41-29-1
30. Alcoholism and Alcohol Abuse Prevention, Control and Treatment 41-30-1
31. Commitment of Alcoholics and Drug Addicts for Treatment 41-31-1
32. Commitment of Alcoholics and Drug Addicts to Private Treatment Facilities 41-32-1
33. Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium 41-33-1
34. Health Care Practice Requirements Pertaining to Transmission of Hepatitis B and HIV 41-34-1
35. Eye Inflammation of Young 41-35-1
36. Determination of Death 41-36-1
37. Autopsies 41-37-1
39. Disposition of Human Bodies or Parts 41-39-1
41. Surgical or Medical Procedures; Consents 41-41-1
42. Family Planning 41-42-1
43. Cemeteries and Burial Grounds 41-43-1
45. Sexual Sterilization [Repealed] 41-45-1
47. Transportation and Possession of Parakeets and Other Birds [Repealed] 41-47-1
49. Regulation of Hotels and Innkeepers 41-49-1
51. Animal and Poultry By-Products Disposal or Rendering Plants 41-51-1
53. Rabies Control in Dogs and Cats 41-53-1
55. Public Ambulance Service 41-55-1
57. Vital Statistics 41-57-1
58. Medical Radiation Technology 41-58-1
59. Emergency Medical Services 41-59-1
60. Emergency Medical Technicians — Paramedics — Use of Automated External Defibrillator .. 41-60-1

TITLE 41. PUBLIC HEALTH (Cont'd)

		Beginning Section
61.	State Medical Examiner	41-61-1
63.	Evaluation and Review of Professional Health Services Providers	41-63-1
65.	[Reserved]	
67.	Mississippi Individual On-Site Wastewater Disposal System Law	41-67-1
69.	[Reserved]	
71.	Home Health Agencies	41-71-1
73.	Hospital Equipment and Facilities Authority Act	41-73-1
75.	Ambulatory Surgical Facilities	41-75-1
77.	Licensing of Birthing Centers	41-77-1
79.	Health Problems of School Children	41-79-1
81.	Perinatal Health Care	41-81-1
83.	Utilization Review of Availability of Hospital Resources and Medical Services	41-83-1
85.	Mississippi Hospice Law of 1995	41-85-1
86.	Mississippi Children's Health Care Insurance Program Act	41-86-1
87.	Early Intervention Act for Infants and Toddlers	41-87-1
88.	Mississippi Child Immunization Act of 1994	41-88-1
89.	Infant Mortality Reduction	41-89-1
90.	Hearing Impairment of Infants and Toddlers	41-90-1
91.	Central Cancer Registry	41-91-1
93.	Osteoporosis Prevention and Treatment Education Act	41-93-1
95.	Mississippi Health Policy Act of 1994	41-95-1
97.	State Employee Wellness and Physical Fitness Programs	41-97-1
99.	Qualified Health Center Grant Program	41-99-1
101.	Mississippi Council on Obesity Prevention and Management	41-101-1
103.	Task Force on Heart Disease and Stroke Prevention	41-103-1
105.	Healthcare Coordinating Council	41-105-1
107.	Health Care Rights of Conscience	41-107-1
109.	Leonard Morris Chronic Kidney Disease Leadership Task Force	41-109-1
111.	Child Death Review Panel	41-111-1
113.	Tobacco Education, Prevention and Cessation Program	41-113-1
114.	Restrictions on Tobacco Use in Public Facilities	41-114-1
115.	Tanning Facilities	41-115-1
117.	Nurse-Family Partnership Pilot Program	41-117-1

TITLE 41. PUBLIC HEALTH (Cont'd)

Beginning Section

119. Health Information Technology Act 41-119-1
121. Requirements for Advertisements for Health Care Services 41-121-1
123. Office of Mississippi Physician Workforce 41-123-1
125. Prescribed Pediatric Extended Care Centers (PPEC) 41-125-1
127. Telemedicine Services 41-127-1
129. Umbilical Cord Blood Banking Program Act 41-129-1
131. Right to Try Act 41-131-1
133. Lay Caregivers for Hospital Patients 41-133-1
135. Support and Promotion of Breast-Feeding in Mississippi 41-135-1

TITLE 43. PUBLIC WELFARE

CHAPTER 1. Department of Human Services and County Departments of Public Welfare 43-1-1
3. Blind Persons 43-3-1
5. Schools for the Blind and Deaf 43-5-1
6. Rights and Liabilities of Persons with Disabilities 43-6-1
7. Council on Aging 43-7-1
9. Old Age Assistance 43-9-1
11. Institutions for the Aged or Infirm 43-11-1
13. Medical Assistance for the Aged; Medicaid 43-13-1
14. Mississippi Statewide System of Care for Children and Youth 43-14-1
15. Child Welfare 43-15-1
16. Child Residential Home Notification Act 43-16-1
17. Temporary Assistance to Needy Families 43-17-1
18. Interstate Compact on the Placement of Children 43-18-1
19. Support of Natural Children 43-19-1
20. Child Care Facilities 43-20-1
21. Youth Court 43-21-1
23. Family Courts [Repealed] 43-23-1
24. State Central Registry of Child Abuse Reports; Wide Area Telephone Service for Reporting Child Abuse [Repealed] 43-24-1
25. Interstate Compacts Relating to Juveniles 43-25-1
26. Department of Child Protection Services 43-26-1
27. Department of Youth Services 43-27-1
29. Persons with Disabilities 43-29-1

TITLE 43. PUBLIC WELFARE (Cont'd)

Beginning Section
30. Mississippi Disability Resource Commission 43-30-1
31. Poor Persons 43-31-1
33. Housing and Housing Authorities 43-33-1
35. Urban Renewal and Redevelopment 43-35-1
37. Acquisition of Real Property Using Public Funds 43-37-1
39. Relocation Assistance 43-39-1
41. Emergency and Disaster Assistance [Repealed] 43-41-1
43. Administration of Social Security Funds 43-43-1
45. Adult Protective Services [Repealed] 43-45-1
47. Mississippi Vulnerable Persons Act 43-47-1
49. Mississippi Welfare Restructuring Program Act of 1993 [Repealed] 43-49-1
51. Family Preservation Act of 1994 43-51-1
53. Mississippi Leadership Council on Aging 43-53-1
55. Mississippi Commission for National and Community Service 43-55-1
57. Comprehensive Plan for Provision of Services to Disabled Persons [Repealed]
59. Mississippi Commission on the Status of Women 43-59-1
61. Mississippi Seniors and Indigents Rx Program 43-61-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER

CHAPTER
1. Department of Public Safety 45-1-1
2. Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds 45-2-1
3. Highway Safety Patrol 45-3-1
4. County Jail Officers Training Program 45-4-1
5. Law Enforcement Officers' Training Academy 45-5-1
6. Law Enforcement Officers Training Program 45-6-1
7. County Patrol Officers 45-7-1
9. Weapons 45-9-1
10. Novelty Lighters 45-10-1
11. Fire Protection Regulations, Fire Protection and Safety in Buildings 45-11-1
12. Mississippi Fire Safety Standard and Firefighter Protection Act [For contingent repeal of this chapter, see § 45-12-21] 45-12-1
13. Fireworks and Explosives 45-13-1
14. Radiation Protection Program 45-14-1
15. High Voltage Power Lines 45-15-1
17. Civil Emergencies 45-17-1
18. Emergency Management Assistance Compact 45-18-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER (Cont'd)

		Beginning Section
19.	Subversive Groups and Subversive Activities ...	45-19-51
21.	Rock Festivals	45-21-1
23.	Boiler and Pressure Vessel Safety	45-23-1
25.	Identification Cards for Non-Drivers. [Repealed]	45-25-1
27.	Mississippi Justice Information Center	45-27-1
29.	Records	45-29-1
31.	Sex Offense Criminal History Record Information Act	45-31-1
33.	Registration of Sex Offenders	45-33-1
35.	Identification Cards	45-35-1
37.	Prevention of Youth Access to Tobacco Act	45-37-1
39.	Statewide Crime Stoppers Advisory Council	45-39-1
41.	Mississippi Silver Alert System	45-41-1
43.	William Lee Montjoy Pool Safety Act	45-43-1
45.	Mississippi Conveyance Safety Act	45-45-1
47.	DNA Data Bank	45-47-1

TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE

Chapter	1.	County and Municipal Prisons and Prisoners ..	47-1-1
	3.	Removal of Prisoners	47-3-1
	4.	Privately Operated Correctional Facilities	47-4-1
	5.	Correctional System	47-5-1
	7.	Probation and Parole	47-7-1

TITLE 49. CONSERVATION AND ECOLOGY

Chapter	1.	General Provisions	49-1-1
	2.	Department of Environmental Quality	49-2-1
	3.	Fisheries and Wildlife Research	49-3-1
	4.	Mississippi Department of Wildlife, Fisheries and Parks	49-4-1
	5.	Fish, Game and Bird Protection and Refuges ...	49-5-1
	6.	Motor Vehicle and Boat Replacement Program	49-6-1
	7.	Hunting and Fishing	49-7-1
	8.	Importation, Sale and Possession of Inherently Dangerous Wild Animals	49-8-1
	9.	Mussels	49-9-1
	10.	Wildlife Violator Compact	49-10-1
	11.	Private Shooting Preserves	49-11-1
	13.	Commercial Quail	49-13-1
	15.	Seafood	49-15-1
	17.	Pollution of Waters, Streams, and Air	49-17-1

TITLE 49. CONSERVATION AND ECOLOGY (Cont'd)

		Beginning Section
18.	Mississippi Liability of Persons Responding to Oil Spills Act	49-18-1
19.	Forests and Forest Protection	49-19-1
20.	Mississippi River Timberlands Control Act [Repealed]	49-20-1
21.	Interstate Environmental Compact	49-21-1
23.	Outdoor Advertising	49-23-1
25.	Junkyards	49-25-1
26.	Channel Maintenance Act	49-26-1
27.	Coastal Wetlands Protection Act	49-27-1
28.	Shoreline and Beach Preservation Districts	49-28-1
29.	Environmental Protection Council [Repealed]	49-29-1
31.	Mississippi Multimedia Pollution Prevention Act	49-31-1
33.	Mississippi Agricultural and Forestry Activity Act	49-33-1
35.	Mississippi Brownfields Voluntary Cleanup and Redevelopment; Remediation of Property on National Priorities List	49-35-1
37.	Statewide Scientific Information Management	49-37-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

Chapter	1.	Navigable Waters	51-1-1
	2.	Mississippi Marine Litter Act	51-2-1
	3.	Water Resources; Regulation and Control	51-3-1
	4.	Mississippi Scenic Streams Stewardship Act	51-4-1
	5.	Subsurface Waters; Well Drillers	51-5-1
	7.	Water Management Districts	51-7-1
	8.	Joint Water Management Districts	51-8-1
	9.	Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act	51-9-1
	11.	Pearl River Basin Development District	51-11-1
	13.	Tombigbee Valley Authority and Water Management District	51-13-1
	15.	Pat Harrison Waterway Commission and District	51-15-1
	17.	Big Black River Basin District	51-17-1
	19.	West Central Mississippi Waterway Commission [Repealed]	51-19-1
	21.	Lower Mississippi River Basin Development District [Repealed]	51-21-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL (Cont'd)

Beginning Section
23. Lower Yazoo River Basin District. [Repealed] .. 51-23-1
25. Yellow Creek Watershed Authority 51-25-1
27. Tennessee-Tombigbee Waterway Compact 51-27-1
29. Drainage Districts with Local Commissioners 51-29-1
31. Drainage Districts with County Commissioners 51-31-1
33. Provisions Common to Drainage Districts and Swamp Land Districts 51-33-1
35. Flood Control 51-35-1
37. Watershed Districts 51-37-1
39. Storm Water Management Districts 51-39-1
41. Public Water Authorities 51-41-1

TITLE 53. OIL, GAS, AND OTHER MINERALS

Chapter 1. State Oil and Gas Board 53-1-1
3. Development, Production and Distribution of Gas and Oil 53-3-1
5. Geological and Mineral Survey 53-5-1
7. Surface Mining and Reclamation of Land 53-7-1
9. Surface Coal Mining and Reclamation of Land 53-9-1
10. Interstate Mining Compact 53-10-1
11. Mississippi Geologic Sequestration of Carbon Dioxide Act 53-11-1

TITLE 55. PARKS AND RECREATION

Chapter 1. Mississippi Recreational Advisory Council [Repealed] 55-1-1
3. State Parks and Forests 55-3-1
5. Federal Parks and National Parkways 55-5-1
7. Bridge and Park Commissions 55-7-1
9. County and Municipal Facilities 55-9-1
11. Harrison County Parkway 55-11-1
13. Natchez Trace Parkway 55-13-1
15. Commemorative Parks and Monuments 55-15-1
17. International Gardens of Mississippi 55-17-1
19. Bienville Recreational District 55-19-1
21. Mississippi Zoological Park and Garden Districts 55-21-1
23. Mississippi Veterans Memorial Stadium 55-23-1
24. Mississippi Coast Coliseum Commission 55-24-1
25. Rails-to-Trails Recreational District 55-25-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT

			Beginning Section
CHAPTER	1.	Mississippi Development Authority	57-1-1
	3.	Agriculture and Industry Program	57-3-1
	4.	Industrial Development Fund	57-4-1
	5.	Industrial Parks and Districts	57-5-1
	7.	Sale or Development of Airport Lands, or Other Lands, for Industrial Purposes	57-7-1
	9.	Industrial Plant Training	57-9-1
	10.	Small Business Assistance	57-10-1
	11.	Market and Industrial Studies and Research	57-11-1
	13.	Research and Development Center	57-13-1
	15.	Marine Resources	57-15-1
	17.	Forest Products Utilization Laboratory [Repealed]	57-17-1
	18.	Renewable Natural Resources Research Act of 1994	57-18-1
	19.	Food Technology Laboratory	57-19-1
	21.	State Chemical Laboratory	57-21-1
	23.	Pharmaceutical Product Development and Utilization	57-23-1
	25.	Southern States Energy Compact	57-25-1
	26.	Tourism Project Incentive Program; Theme Parks, Entertainment Centers, Scenic Attractions, etc.	57-26-1
	27.	Regional Tourist Promotion Councils	57-27-1
	28.	Tourism Project Incentive Program; Entertainment Districts, etc.	57-28-1
	29.	Travel and Tourism	57-29-1
	30.	Family-Oriented Enterprises	57-30-1
	31.	County Industrial Development Authorities	57-31-1
	32.	Southeast Mississippi Industrial Council	57-32-1
	33.	Southern Growth Policies Agreement	57-33-1
	34.	Alabama-Mississippi Joint Economic Development Authority	57-34-1
	35.	Tennessee River Valley Association	57-35-1
	36.	Chickasaw Trail Economic Development Compact [Repealed]	57-36-1
	37.	Transportation Planning Council [Repealed]	57-37-1
	39.	Energy and Transportation Planning	57-39-1
	40.	Energy Infrastructure Revolving Loan Program	57-40-1
	41.	Financing Industrial Enterprise Projects	57-41-1
	43.	Railroad Revitalization	57-43-1
	44.	Local Governments Freight Rail Service Projects	57-44-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

		Beginning Section
45.	Mississippi-Louisiana-Alabama Rapid Rail Transit Compact	57-45-1
46.	Mississippi Railroad Improvements Fund	57-46-1
47.	Southeast Interstate Low-Level Radioactive Waste Management Compact	57-47-1
49.	Nuclear Waste Storage and Disposal	57-49-1
51.	Enterprise Zones [Repealed]	57-51-1
53.	Corporate Headquarters Incentive Program [Repealed]	57-53-1
54.	Advanced Technology Initiative [Repealed]	57-54-1
55.	Universities Research Institutes	57-55-1
56.	Mississippi Technology Transfer Office	57-56-1
57.	Export Trade Development	57-57-1
59.	Mississippi Capital Companies [Repealed]	57-59-1
61.	Mississippi Business Investment Act	57-61-1
62.	Mississippi Advantage Jobs Act	57-62-1
63.	Statewide Economic Development and Planning Act	57-63-1
64.	Regional Economic Development	57-64-1
65.	Mississippi International Trade Institute	57-65-1
67.	Mississippi Superconducting Super Collider Act	57-67-1
69.	Mississippi Minority Business Enterprise Act	57-69-1
71.	Mississippi Small Enterprise Development Finance Act	57-71-1
73.	Economic Development Reform Act	57-73-1
75.	Mississippi Major Economic Impact Act	57-75-1
77.	Venture Capital Act of 1994	57-77-1
79.	Mississippi Small Town Development Act	57-79-1
80.	Growth and Prosperity Act	57-80-1
81.	Mississippi Science and Technology Commission [Repealed]	57-81-1
83.	Mississippi Technology, Inc. Liaison Committee	57-83-1
85.	Mississippi Rural Impact Act	57-85-1
87.	Mississippi Broadband Technology Development Act	57-87-1
89.	Mississippi Motion Picture Incentive Act	57-89-1
91.	Economic Redevelopment Act	57-91-1
93.	Mississippi Existing Industry Productivity Loan Program	57-93-1
95.	Mississippi Job Protection Act	57-95-1
97.	Mississippi Delta Revitalization Act of 2006	57-97-1
99.	Mississippi Major Economic Impact Withholding Rebate Incentive Program	57-99-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section
100. Existing Industry Withholding Rebate Incentive Program 57-100-1
101. Mississippi Major Economic Impact Authority Component Construction Material Costs Rebate Program 57-101-1
103. Technology Based Business Capital Assistance Programs 57-103-1
105. Qualified Equity Investment Tax Credits and Public Entity Financing Arrangements 57-105-1
107. Mississippi Workforce Training Projects 57-107-1
111. Mississippi Small Business and Existing Forestry Industry Enterprise Participating Loan Program 57-111-1
113. Business Enterprise Tax Exemptions 57-113-1
115. Mississippi Small Business Investment Company Act 57-115-1
117. Mississippi Health Care Industry Zone Act [Repealed effective July 1, 2022] 57-117-1

TITLE 59. PORTS, HARBORS, LANDINGS AND WATERCRAFT

CHAPTER 1. Harbor or Port Commissions; Powers of Political Subdivision; Pilotage 59-1-1
3. Ports of Entry 59-3-1
5. State Ports and Harbors 59-5-1
6. Compact for Development of Deep Draft Harbor and Terminal 59-6-1
7. County and Municipal Harbors 59-7-1
9. County Port Authority or Development Commission 59-9-1
11. County Port and Harbor Commission 59-11-1
13. Harbor Improvements by Coast Counties 59-13-1
15. Small Craft Harbors 59-15-1
17. State Inland Ports 59-17-1
19. Landings 59-19-1
21. Boats and Other Vessels 59-21-1
23. Alcohol Boating Safety Act 59-23-1
25. Certificates of Title for Boats and Other Vessels 59-25-1

TITLE 61. AVIATION

CHAPTER 1. Transportation Commission 61-1-1
3. Airport Authorities 61-3-1
4. Mississippi Wayport Authority Act 61-4-1

TITLE 61. AVIATION (Cont'd)

Beginning Section

5. Acquisition, Disposition and Support of Airport Facilities 61-5-1
7. Airport Zoning 61-7-1
9. Incorporation of Airport Into Corporate Boundaries of Municipality 61-9-1
11. Operation of Aircraft; Certification and Licensing of Pilots and Aircraft 61-11-1
13. Aircraft for Use of Governor, State Departments and Agencies 61-13-1
15. Registration of Aircraft 61-15-1
17. Concealing or Misrepresenting Aircraft Identification Number; Non-Conforming Aircraft Fuel Containers 61-17-1
19. Aviation Hazards 61-19-1

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS

CHAPTER 1. Driver's License 63-1-1
2. Mandatory Use of Safety Seat Belts 63-2-1
3. Traffic Regulations and Rules of the Road 63-3-1
5. Size, Weight and Load 63-5-1
7. Equipment and Identification 63-7-1
9. Traffic Violations Procedure 63-9-1
10. Nonresident Traffic Violator Compact 63-10-1
11. Implied Consent Law 63-11-1
13. Inspection of Motor Vehicles 63-13-1
15. Motor Vehicle Safety — Responsibility 63-15-1
16. Public Safety Verification and Enforcement Act [Repealed effective July 1, 2018] 63-16-1
17. Manufacture, Sales and Distribution 63-17-1
19. Motor Vehicle Sales Finance Law 63-19-1
21. Motor Vehicle Titles 63-21-1
23. Abandoned Motor Vehicles 63-23-1
25. Motor Vehicle Chop Shop, Stolen and Altered Property Act 63-25-1
27. Disclosure of Use of Nonoriginal Replacement Parts 63-27-1
29. Mississippi Vehicle Protection Product Act 63-29-1
31. Operating Off-Road Vehicles 63-31-1
33. Miscellaneous Provisions 63-33-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES

CHAPTER 1. Transportation Department 65-1-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES (Cont'd)

		Beginning Section
2.	State Transportation Arbitration Board	65-2-1
3.	State Highway System	65-3-1
4.	Economic Development Highway Act	65-4-1
5.	Controlled Access Facilities	65-5-1
7.	Public Roads and Streets; Private Way	65-7-1
9.	State Aid Roads in Counties	65-9-1
10.	County Major Feeder Road System [Repealed]	65-10-1
11.	County Highway Aid	65-11-1
13.	Highway and Street Revenue Bond Authority	65-13-1
15.	County Funds for Roads and Bridges	65-15-1
17.	County Road Officials	65-17-1
18.	Local System Road Program	65-18-1
19.	Separate Road Districts	65-19-1
21.	Bridges; General Provisions	65-21-1
23.	Bridges; Boundary and Other Waters	65-23-1
25.	Mississippi River Bridges	65-25-1
26.	Tennessee-Tombigbee Waterway Bridges	65-26-1
27.	Ferries; General Provisions	65-27-1
29.	Ferries in Certain Counties	65-29-1
31.	Hospitality Stations on Highways	65-31-1
33.	Sea Walls	65-33-1
37.	Local System Bridge Replacement and Rehabilitation Program	65-37-1
39.	Gaming Counties Bond Sinking Fund	65-39-1
41.	Mississippi Scenic Byways	65-41-1
43.	Toll Roads and Toll Bridges	65-43-1

TITLE 67. ALCOHOLIC BEVERAGES

CHAPTER 1.	Local Option Alcoholic Beverage Control	67-1-1
3.	Sale of Light Wine, Beer, and Other Alcoholic Beverages	67-3-1
5.	Native Wines	67-5-1
7.	Beer Industry Fair Dealing Act	67-7-1
9.	Possession or Transportation of Alcoholic Beverages, Light Wine, or Beer	67-9-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS

CHAPTER 1.	Agriculture and Commerce Department; Council on Agriculture	69-1-1
2.	Mississippi Farm Reform Act	69-2-1
3.	Agricultural Seeds	69-3-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

Beginning Section

5. Fairs; Stock Shows; Improvement of Livestock 69-5-1
7. Markets and Marketing; Domestic Fish Farming 69-7-1
8. Beef Promotion And Research Program ....
9. Soybean Promotion Board 69-9-1
10. Rice Promotion Board 69-10-1
11. Swine 69-11-1
13. Stock Laws, Estrays 69-13-1
15. Board of Animal Health; Livestock and Animal Diseases 69-15-1
17. Livestock Biologics, Drugs and Vaccines 69-17-1
19. Regulation of Professional Services 69-19-1
21. Crop Spraying and Licensing of Aerial Applicators 69-21-1
23. Mississippi Pesticide Law 69-23-1
24. Fertilizing Materials and Additives 69-24-1
25. Plants, Plant and Bee Diseases 69-25-1
26. Pest Control Compact 69-26-1
27. Soil Conservation 69-27-1
28. Protection and Conservation of Agricultural Lands 69-28-1
29. Livestock Brands, Theft or Loss of Livestock and Protective Associations 69-29-1
31. Regulation of Moisture-Measuring Devices 69-31-1
33. Pecan Harvesting 69-33-1
34. Milk Producers Transportation Cost Assistance Loan Program 69-34-1
35. Mississippi Dairy Promotion Act 69-35-1
36. Southern Dairy Compact 69-36-1
37. Mississippi Boll Weevil Management Act 69-37-1
39. Agricultural Liming Materials 69-39-1
41. Mississippi Agribusiness Council Act of 1993 ... 69-41-1
42. Program to Encourage Growth in Mississippi Agribusiness Industry 69-42-1
43. Mississippi Ratite Council and Promotion Board 69-43-1
44. Mississippi Corn Promotion Board 69-44-1
45. Mississippi Agricultural Promotions Program Act 69-45-1
46. Mississippi Land, Water and Timber Resources Act 69-46-1
47. Organic Certification Program 69-47-1
48. Peanut Promotion Board 69-48-1
49. Field Crop Products 69-49-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

Beginning Section
51. Ethanol, Anhydrous Alcohol and Wet Alcohol ... 69-51-1
53. Agritourism [Repealed effective July 1, 2018] .. 69-53-1

TITLE 71. LABOR AND INDUSTRY

Chapter 1. Employer and Employee ... 71-1-1
3. Workers' Compensation ... 71-3-1
5. Unemployment Compensation ... 71-5-1
7. Drug and Alcohol Testing of Employees ... 71-7-1
9. Medical Savings Account Act ... 71-9-1
11. Employment Protection Act ... 71-11-1
13. Prohibition Against Employer Intimidation Act 71-13-1
15. Mississippi Employment Fairness Act ... 71-15-1

TITLE 73. PROFESSIONS AND VOCATIONS

Chapter 1. Architects ... 73-1-1
2. Landscape Architectural Practice ... 73-2-1
3. Attorneys at Law ... 73-3-1
4. Auctioneers ... 73-4-1
5. Barbers ... 73-5-1
6. Chiropractors ... 73-6-1
7. Cosmetologists ... 73-7-1
9. Dentists ... 73-9-1
10. Dietitians ... 73-10-1
11. Practice of Funeral Service and Funeral Directing ... 73-11-1
13. Engineers and Land Surveyors ... 73-13-1
14. Hearing Aid Dealers ... 73-14-1
15. Nurses ... 73-15-1
17. Nursing Home Administrators ... 73-17-1
19. Optometry and Optometrists ... 73-19-1
21. Pharmacists ... 73-21-1
22. Orthotics and Prosthetics ... 73-22-1
23. Physical Therapists ... 73-23-1
24. Mississippi Occupational Therapy Practice Act 73-24-1
25. Physicians ... 73-25-1
26. Physician Assistants ... 73-26-1
27. Podiatrists ... 73-27-1
29. Polygraph Examiners ... 73-29-1
30. Licensed Professional Counselors ... 73-30-1
31. Psychologists ... 73-31-1
33. Public Accountants ... 73-33-1

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

Beginning Section
34. Real Estate Appraisers 73-34-1
35. Real Estate Brokers 73-35-1
36. Registered Foresters 73-36-1
37. Sanitarians 73-37-1
38. Speech Pathologists and Audiologists 73-38-1
39. Veterinarians 73-39-1
41. Athlete Agents [Repealed] 73-41-1
42. Uniform Athlete Agents Law 73-42-1
43. State Board of Medical Licensure 73-43-1
45. Information to Be Included in Prescriptions 73-45-1
47. [Reserved] ....
49. Health Care Provider Licensing Boards 73-49-1
50. Licensing, Certifying or Registering Military-trained Individuals or Spouses to Lawfully Practice Occupation 73-50-1
51. Unlicensed Practice of Profession 73-51-1
52. Licensure Records 73-52-1
53. Licensing and Regulation of Social Workers 73-53-1
54. Marriage and Family Therapists 73-54-1
55. Mississippi Athletic Trainers Licensure Act 73-55-1
57. Mississippi Respiratory Care Practice Act 73-57-1
59. Residential Builders and Remodelers 73-59-1
60. Home Inspectors 73-60-1
61. Tattooing and Body Piercing 73-61-1
63. Registered Professional Geologists Practice Act 73-63-1
65. Professional Art Therapists 73-65-1
67. Professional Massage Therapists 73-67-1
69. Mississippi Electronic Protection Licensing Act 73-69-1
71. Acupuncture Practice Act 73-71-1
73. Mississippi Certified Interior Designer Act 73-73-1
75. Licensed Behavior Analysts 73-75-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 1. Uniform Commercial Code — Revised Article 1. General Provisions 75-1-101
2. Uniform Commercial Code — Sales 75-2-101
2A. Uniform Commercial Code — Leases 75-2A-101
3. Uniform Commercial Code — Negotiable Instruments 75-3-101
4. Uniform Commercial Code — Bank Deposits and Collections 75-4-101

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

		Beginning Section
4A.	Uniform Commercial Code — Funds Transfers	75-4A-101
5.	Uniform Commercial Code — Revised Article 5. Letters of Credit	75-5-101
6.	Uniform Commercial Code — Bulk Transfers	75-6-101
7.	Uniform Commercial Code — Documents of Title	75-7-101
8.	Uniform Commercial Code — Revised Article 8. Investment Securities	75-8-101
9.	Uniform Commercial Code — Secured Transactions	75-9-101
10.	Uniform Commercial Code — Effective Date and Repealer	75-10-101
11.	Uniform Commercial Code — Effective Date and Transition Provisions: 1977 Amendments	75-11-101
12.	Uniform Electronic Transactions Act	75-12-1
13.	Bills, Notes and Other Writings	75-13-1
15.	Mississippi Money Transmitters Act	75-15-1
17.	Interest, Finance Charges, and Other Charges	75-17-1
18.	Revolving Charge Agreements; Credit Cards [Repealed]	75-18-1
19.	Seals	75-19-1
21.	Trusts and Combines in Restraint or Hindrance of Trade	75-21-1
23.	Fair Trade Laws	75-23-1
24.	Regulation of Business for Consumer Protection	75-24-1
25.	Registration of Trademarks and Labels	75-25-1
26.	Mississippi Uniform Trade Secrets Act	75-26-1
27.	Weights and Measures	75-27-1
29.	Sale and Inspection of Food and Drugs	75-29-1
31.	Milk and Milk Products	75-31-1
33.	Meat, Meat-Food and Poultry Regulation and Inspection	75-33-1
35.	Meat Inspection	75-35-1
37.	Operation of Frozen Food Locker Plants [Repealed]	75-37-1
39.	Sale of Baby Chicks	75-39-1
40.	Importation and Sale of Animals or Birds	75-40-1
41.	Gins	75-41-1
43.	Farm Warehouses	75-43-1
44.	Grain Warehouses	75-44-1
45.	Commercial Feeds and Grains	75-45-1
47.	Commercial Fertilizers	75-47-1
49.	Factory-Built Homes	75-49-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

		Beginning Section
51.	Water Heaters	75-51-1
53.	Paints, Varnishes and Similar Materials	75-53-1
55.	Gasoline and Petroleum Products	75-55-1
56.	Antifreeze and Summer Coolants	75-56-1
57.	Liquefied Petroleum Gases	75-57-1
58.	Mississippi Natural Gas Marketing Act	75-58-1
59.	Correspondence Courses	75-59-1
60.	Proprietary Schools and Colleges	75-60-1
61.	Manufacture and Sale of Jewelry and Optical Equipment	75-61-1
63.	Sales of Cemetery Merchandise and Funeral Services	75-63-1
65.	Going Out of Business Sales; Unsolicited Goods	75-65-1
66.	Home Solicitation Sales	75-66-1
67.	Loans	75-67-1
69.	Farm Loan Bonds	75-69-1
71.	Mississippi Securities Act of 2010	75-71-101
72.	Business Takeovers	75-72-1
73.	Hotels and Innkeepers	75-73-1
74.	Youth Camps	75-74-1
75.	Amusements, Exhibitions and Athletic Events	75-75-1
76.	Mississippi Gaming Control Act	75-76-1
77.	Repurchase of Inventories From Retailers Upon Termination of Contract	75-77-1
79.	Pulpwood Scaling and Practices	75-79-1
81.	Dance Studio Lessons	75-81-101
83.	Health Spas	75-83-1
85.	Transient Vendor	75-85-1
87.	Contracts Between Out-of-State Principals and Commissioned Sales Representatives	75-87-1
89.	Mississippi Commodities Enforcement Act	75-89-1
91.	Truth in Music Advertising	75-91-1
93.	Fictitious Business Name Registration Act	75-93-1
95.	Business of Purchasing Precious Items for Resale	75-95-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS

CHAPTER	1.	Public Service Commission	77-1-1
	2.	Public Utilities Staff	77-2-1
	3.	Regulation of Public Utilities	77-3-1
	5.	Electric Power	77-5-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS (Cont'd)

Beginning Section
6. Municipal Gas Authority of Mississippi Law 77-6-1
7. Motor Carriers 77-7-1
8. Transportation Network Companies 77-8-1
9. Railroads and Other Common Carriers 77-9-1
11. Gas Pipelines and Distribution Systems 77-11-1
13. Regulation of Excavations Near Underground Utility Facilities 77-13-1
15. Local Natural Gas Districts 77-15-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

CHAPTER
1. General Provisions Relative to Corporations 79-1-1
3. Business Corporations [Repealed] 79-3-1
4. Mississippi Business Corporation Act 79-4-1.01
5. Business Development Corporations [Repealed] 79-5-1
6. Foreign Limited Liability Companies [Repealed] 79-6-1
7. Small Business Investment Companies 79-7-1
9. Professional Corporations [Repealed] 79-9-1
10. Mississippi Professional Corporation Act 79-10-1
11. Nonprofit, Nonshare Corporations and Religious Societies 79-11-1
12. Partnerships [Repealed] 79-12-1
13. Uniform Partnership Act (1997) 79-13-101
14. Mississippi Uniform Limited Partnership Act .. 79-14-101
15. Investment Trusts 79-15-1
16. Mississippi Registration of Foreign Business Trusts Act 79-16-1
17. Agricultural Associations; Conversion to Corporate Form 79-17-1
19. Agricultural Cooperative Marketing Associations 79-19-1
21. Aquatic Products Marketing Association 79-21-1
22. Mississippi Aquaculture Act of 1988 79-22-1
23. Commercial and Proprietary Information 79-23-1
25. Mississippi Shareholder Protection Act 79-25-1
27. Mississippi Control Share Act 79-27-1
29. Revised Mississippi Limited Liability Company Act 79-29-101
31. Mississippi Registration of Foreign Limited Liability Partnerships Act [Repealed] 79-31-1
33. Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations 79-33-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS (Cont'd)

Beginning Section
35. The Mississippi Registered Agents Act 79-35-1
37. Mississippi Entity Conversion and Domestication Act 79-37-101

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS

Chapter 1. Department of Banking and Consumer Finance 81-1-1
3. Incorporation and Organization of Banks 81-3-1
5. General Provisions Relating to Banks and Banking 81-5-1
7. Branch Banks 81-7-1
8. Regional Banking Institutions 81-8-1
9. Insolvent Banks 81-9-1
11. Savings and Loan Associations [Repealed] 81-11-1
12. Savings Associations Law 81-12-1
13. Credit Unions 81-13-1
14. Savings Bank Law 81-14-1
15. Mississippi Rural Credit Law 81-15-1
17. Farmers' Credit Associations 81-17-1
18. Mississippi S.A.F.E. Mortgage Act 81-18-1
19. Consumer Loan Broker Act 81-19-1
20. Consumer Complaints and Disputes Against Mortgage Companies 81-20-1
21. Insurance Premium Finance Companies 81-21-1
22. Mississippi Debt Management Services Act [Repealed effective July 1, 2016] 81-22-1
23. Interstate Bank Branching 81-23-1
25. The Mississippi International Banking Act 81-25-1
27. Multistate, State and Limited Liability Trust Institutions 81-27-1.001
29. Lender Trade Name and Trademark Use 81-29-1

TITLE 83. INSURANCE

Chapter 1. Department of Insurance 83-1-1
2. Competitive Rating for Property and Casualty Insurance 83-2-1
3. Commissioner of Insurance, Rating Bureau and Rates 83-3-1
5. General Provisions Relative to Insurance and Insurance Companies 83-5-1
6. Registration and Examination of Insurers 83-6-1
7. Life Insurance 83-7-1

TITLE 83. INSURANCE (Cont'd)

		Beginning Section
9.	Accident, Health and Medicare Supplement Insurance	83-9-1
11.	Automobile Insurance	83-11-1
13.	Fire Insurance	83-13-1
14.	Homeowners' and Farmowners' Insurance [Repealed]	83-14-1
15.	Title Insurance	83-15-1
17.	Insurance Agents, Solicitors, or Adjusters	83-17-1
18.	Insurance Administrators and Managing General Agents	83-18-1
19.	Domestic Companies	83-19-1
20.	Domicile Change for Domestic and Foreign Insurers	83-20-1
21.	Foreign Companies	83-21-1
23.	Insolvent Insurance Companies; Insurance Guaranty Association	83-23-1
24.	Insurers Rehabilitation and Liquidation Act	83-24-1
25.	Co-operative Insurance	83-25-1
27.	Surety Companies	83-27-1
29.	Fraternal Societies	83-29-1
30.	Larger Fraternal Benefit Societies	83-30-1
31.	Mutual Companies	83-31-1
33.	Reciprocal Insurance	83-33-1
34.	Windstorm Underwriting Association	83-34-1
35.	Underwriting Association [Repealed]	83-35-1
36.	Joint Underwriting Association for Medical Malpractice Insurance	83-36-1
37.	Burial Associations	83-37-1
38.	Mississippi Residential Property Insurance Underwriting Association Law	83-38-1
39.	Bail Bonds and Bondsmen	83-39-1
41.	Hospital and Medical Service Associations and Contracts	83-41-1
43.	Nonprofit Dental Service Corporations	83-43-1
45.	Nonprofit, Community Service Blood Supply Plans	83-45-1
47.	Nonprofit Medical Liability Insurance Corporations	83-47-1
48.	Medical Malpractice Insurance Availability Act	83-48-1
49.	Legal Expense Insurance	83-49-1
51.	Dental Care Benefits	83-51-1
53.	Credit Life and Credit Disability Insurance	83-53-1

TITLE 83. INSURANCE (Cont'd)

Beginning Section

54. Mississippi Creditor-Placed Insurance Act 83-54-1
55. Risk Retention Act 83-55-1
57. Home Warranties [Repealed]. 83-57-1
58. New Home Warranty Act 83-58-1
59. Business Transacted With Producer Controlled Insurer Act 83-59-1
61. Voluntary Basic Health Insurance Coverage Law 83-61-1
62. Health Savings Accounts 83-62-1
63. Small Employer Health Benefit Plans 83-63-1
64. Health Discount Plans 83-64-1
65. Regulation of Vehicle Service Contracts 83-65-101
67. Utilization of Modern Systems for Holding and Transferring Securities Without Physical Delivery 83-67-1
69. Interstate Insurance Product Regulation Compact 83-69-1
71. Unfair Discrimination Against Subjects of Abuse in Health, Life, and Disability Income Insurance 83-71-1
73. Portable Electronics Insurance 83-73-1
75. Homeowners Insurance Discount for Hurricane or Windstorm Damage Mitigation 83-75-1
77. Health Care Sharing Ministries 83-77-1
79. Property Insurance Clarity Act 83-79-1
81. Mississippi Direct Primary Care Act 83-81-1
83. Limited Lines Travel Insurance Act 83-83-1

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

Chapter 1. Assignment for Benefit of Creditors 85-1-1
3. Exempt Property 85-3-1
5. Joint and Several Debtors 85-5-1
7. Liens 85-7-1
8. Uniform Federal Lien Registration Act 85-8-1
9. Debt Adjusting or Credit Arranging [Repealed]. 85-9-1
11. Mississippi Uniform State Tax Lien Registration Act 85-11-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

Chapter 1. Gambling and Future Contracts 87-1-1
3. Power and Letters of Attorney 87-3-1
5. Principal and Surety 87-5-1
7. Improvements to Real Property 87-7-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS (Cont'd)

Beginning Section
9. General Provisions 87-9-1

TITLE 89. REAL AND PERSONAL PROPERTY

CHAPTER 1. Land and Conveyances 89-1-1
2. Liability of Recreational Landowners 89-2-1
3. Acknowledgments 89-3-1
5. Recording of Instruments 89-5-1
6. Mississippi Plane Coordinate System 89-6-1
7. Landlord and Tenant 89-7-1
8. Residential Landlord and Tenant Act 89-8-1
9. Condominiums 89-9-1
11. Escheats 89-11-1
12. Uniform Disposition of Unclaimed Property Act 89-12-1
13. Party Fences 89-13-1
15. Party Walls 89-15-1
17. Salvage 89-17-1
19. Mississippi Conservation Easements 89-19-1
21. Uniform Disclaimer of Property Interests Act .. 89-21-1
23. Mississippi Uniform Environmental Covenants Act 89-23-1
25. Mississippi Uniform Statutory Rule Against Perpetuities 89-25-1

TITLE 91. TRUSTS AND ESTATES

CHAPTER 1. Descent and Distribution 91-1-1
3. Uniform Simultaneous Death Law 91-3-1
5. Wills and Testaments 91-5-1
7. Executors and Administrators 91-7-1
8. Mississippi Uniform Trust Code 91-8-101
9. Trusts and Trustees 91-9-1
11. Fiduciary Security Transfers 91-11-1
13. Fiduciary Investments 91-13-1
15. Release of Powers of Appointment 91-15-1
17. Mississippi Principal and Income Act of 2013 .. 91-17-101
19. Gifts to Minors [Repealed] 91-19-1
20. Transfers to Minors 91-20-1
21. Uniform Transfer-on-Death Security Registration Act 91-21-1

TITLE 93. DOMESTIC RELATIONS

CHAPTER 1. Marriage 93-1-1

TITLE 93. DOMESTIC RELATIONS (Cont'd)

Beginning Section
3. Husband and Wife 93-3-1
5. Divorce and Alimony 93-5-1
7. Annulment of Marriage 93-7-1
9. Bastardy 93-9-1
11. Enforcement of Support of Dependents 93-11-1
12. Enforcement of Child Support Orders from Foreign Jurisdictions 93-12-1
13. Guardians and Conservators 93-13-1
14. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act 93-14-101
15. Mississippi Termination of Parental Rights Law 93-15-1
16. Grandparents' Visitation Rights 93-16-1
17. Adoption, Change of Name, and Legitimation of Children 93-17-1
19. Removal of Disability of Minority 93-19-1
21. Protection from Domestic Abuse 93-21-1
22. Uniform Interstate Enforcement of Domestic Violence Protection Orders 93-22-1
23. Uniform Child Custody Jurisdiction Act [Repealed] 93-23-1
25. Uniform Interstate Family Support Act 93-25-1
27. Uniform Child Custody Jurisdiction and Enforcement Act 93-27-101
29. Uniform Child Abduction Prevention Act 93-29-1
31. Supporting and Strengthening Families Act 93-31-1

TITLE 95. TORTS

CHAPTER 1. Libel and Slander 95-1-1
3. Nuisances 95-3-1
5. Trespass 95-5-1
7. Liability Exemption for Donors of Food 95-7-1
9. Liability Exemption for Volunteers and Sports Officials 95-9-1
11. Liability Exemption for Equine and Livestock Activities 95-11-1
13. Liability Exemption for Noise Pollution by Sport-shooting Ranges 95-13-1
15. Liability Exemption for Report of Suspicious Activity or Behavior 95-15-1

TITLE 97. CRIMES

CHAPTER 1. Conspiracy, Accessories and Attempts 97-1-1

TITLE 97. CRIMES (Cont'd)

Beginning Section
3. Crimes Against the Person 97-3-1
5. Offenses Affecting Children 97-5-1
7. Crimes Against Sovereignty or Administration of Government 97-7-1
9. Offenses Affecting Administration of Justice 97-9-1
11. Offenses Involving Public Officials 97-11-1
13. Election Crimes 97-13-1
15. Offenses Affecting Highways, Ferries and Waterways 97-15-1
17. Crimes Against Property 97-17-1
19. False Pretenses and Cheats 97-19-1
21. Forgery and Counterfeiting 97-21-1
23. Offenses Affecting Trade, Business and Professions 97-23-1
25. Offenses Affecting Railroads, Public Utilities and Carriers 97-25-1
27. Crimes Affecting Public Health 97-27-1
29. Crimes Against Public Morals and Decency 97-29-1
31. Intoxicating Beverage Offenses 97-31-1
32. Tobacco Offenses 97-32-1
33. Gambling and Lotteries 97-33-1
35. Crimes Against Public Peace and Safety 97-35-1
37. Weapons and Explosives 97-37-1
39. Dueling 97-39-1
41. Cruelty to Animals 97-41-1
43. Racketeer Influenced and Corrupt Organization Act (RICO) 97-43-1
44. Mississippi Streetgang Act 97-44-1
45. Computer Crimes and Identity Theft 97-45-1

TITLE 99. CRIMINAL PROCEDURE

CHAPTER
1. General Provisions; Time Limitations; Costs ... 99-1-1
3. Arrests 99-3-1
5. Bail 99-5-1
7. Indictment 99-7-1
9. Process 99-9-1
11. Jurisdiction and Venue 99-11-1
13. Insanity Proceedings 99-13-1
15. Pretrial Proceedings 99-15-1
17. Trial 99-17-1
18. Office of State Public Defender 99-18-1
19. Judgment, Sentence, and Execution 99-19-1

TITLE 99. CRIMINAL PROCEDURE (Cont'd)

		Beginning Section
20.	Community Service Restitution	99-20-1
21.	Fugitives From Other States	99-21-1
23.	Peace Bonds	99-23-1
25.	Forms	99-25-1
27.	Proceedings for Intoxicating Beverage Offenses	99-27-1
29.	Vagrancy Proceedings	99-29-1
31.	Obscene Publications Proceedings [Repealed] ..	99-31-1
33.	Prosecutions Before Justice Court Judges	99-33-1
35.	Appeals	99-35-1
36.	Victim Assistance Coordinator	99-36-1
37.	Restitution to Victims of Crimes	99-37-1
38.	Crime Victim's Escrow Account Act	99-38-1
39.	Post-Conviction Proceedings	99-39-1
40.	Indigent Appeals Division	99-40-1
41.	Mississippi Crime Victims' Compensation Act ..	99-41-1
43.	Mississippi Crime Victims' Bill of Rights	99-43-1
45.	Statewide Automated Victim Information and Notification System	99-45-1
47.	Victim of Domestic Violence, Sexual Assault or Stalking Address Confidentiality Program	99-47-1
49.	Preservation and Accessibility of Biological Evidence	99-49-1

MISSISSIPPI CODE
1972

ANNOTATED

VOLUME SIXTEEN B

TITLE 75

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

Chapter 9. Uniform Commercial Code—Secured Transactions 75-9-101
Chapter 10. Uniform Commercial Code—Effective Date and Repealer 75-10-101
Chapter 11. Uniform Commercial Code—Effective Date and Transition Provisions: 1977 Amendments 75-11-101

CHAPTER 9

Uniform Commercial Code—Secured Transactions

Part 1. General Provisions..75-9-101
Part 2. Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement..............75-9-201
Part 3. Perfection and Priority..75-9-301
Part 4. Rights of Third Parties..75-9-401
Part 5. Filing...75-9-501
Part 6. Default...75-9-601
Part 7. Transition...75-9-701
Part 8. Transition Provisions for 2013 Amendments....................75-9-801

Editor's Note — Laws of 2001, ch. 495, §§ 1 and 2, effective January 1, 2002, repealed the sections formerly codified as Chapter 9 [UCC Article 9] and enacted a revised Chapter 9 [UCC Revised Article 9].

The following tables of disposition list the provisions of UCC Article 9 and other Code sections as they existed prior to January 1, 2002, and the corresponding provisions in UCC Revised Article 9, effective January 1, 2002. These tables are intended to assist the user who is familiar with the former Article 9 in finding comparable new provisions in Revised Article 9. In addition, where appropriate, the Source lines from the former provisions have been retained in the new provisions.

These tables are based on tables prepared by the American Law Institute and the National Conference of Commissioners on Uniform State Law as part of Revised Article 9.

TABLE OF DISPOSITION OF SECTIONS IN FORMER ARTICLE 9 AND OTHER CODE SECTIONS

FORMER ARTICLE 9	REVISED ARTICLE 9
75-9-101	75-9-101
75-9-102	75-9-109
75-9-103(1)(a), (b)	75-9-301
75-9-103(1)(c)	Omitted
75-9-103(1)(d)	75-9-316
75-9-103(2)(a)	75-9-303
75-9-103(2)(b)	75-9-316
75-9-103(2)(c)	Omitted
75-9-103(2)(d)	75-9-337
75-9-103(3)(a), (b)	75-9-301
75-9-103(3)(c)	Omitted
75-9-103(3)(d)	75-9-307
75-9-103(3)(e)	75-9-316
75-9-103(4)	75-9-301
75-9-103(5)	75-9-301
75-9-103(6)	75-9-304, 75-9-305, 75-9-306
75-9-104	75-9-109
75-9-105	75-9-102
75-9-106	75-9-102
75-9-107	75-9-103
75-9-108	Omitted as no longer needed
75-9-109	75-9-102
75-9-110	75-9-108
75-9-111	Deleted as unnecessary
75-9-112	Omitted — see 75-9-102(a)(28)
75-9-113	75-9-110
75-9-114	Omitted — see 75-9-103 and 75-9-324
75-9-115(1)(a)-(d), (f)	75-9-102
75-9-115(1)(e)	75-9-106
75-9-115(2)	75-9-203, 75-9-308
75-9-115(3)	75-9-108
75-9-115(4)	75-9-309, 75-9-312, 75-9-314
75-9-115(5)	75-9-327, 75-9-328, 75-9-329
75-9-115(6)	75-9-203, 75-9-313
75-9-116	75-9-206, 75-9-309
75-9-201	75-9-201
75-9-202	75-9-202
75-9-203(1)-(3)	75-9-203
75-9-203(4)	75-9-201
75-9-204	75-9-204
75-9-205	75-9-205
75-9-206	75-9-403
75-9-207	75-9-207
75-9-208	75-9-210
75-9-301(1), (2)	75-9-317
75-9-301(3)	75-9-102
75-9-301(4)	75-9-323
75-9-302(1)	75-9-309, 75-9-310
75-9-302(2)	75-9-310
75-9-302(3), (4)	75-9-311
75-9-303	75-9-308

FORMER ARTICLE 9	REVISED ARTICLE 9
75-9-304	75-9-312
75-9-305	75-9-306, 75-9-313
75-9-306	75-9-315
75-9-307(1), (2)	75-9-320
75-9-307(3)	75-9-323
75-9-308	75-9-330
75-9-309	75-9-331
75-9-310	75-9-333
75-9-311	75-9-401
75-9-312(1)	75-9-322
75-9-312(2)	Omitted — see Appendix II
75-9-312(3), (4)	75-9-324
75-9-312(5), (6)	75-9-322
75-9-312(7)	75-9-323
75-9-313(1)-(7)	75-9-334
75-9-313(8)	75-9-604
75-9-314	75-9-335
75-9-315	75-9-336
75-9-316	75-9-339
75-9-317	75-9-402
75-9-318(1)	75-9-404
75-9-318(2)	75-9-405
75-9-318(3), (4)	75-9-406
75-9-401	75-9-501
75-9-402(1)	75-9-502, 75-9-504
75-9-402(2)	Omitted as unnecessary
75-9-402(3)	75-9-521
75-9-402(4)	75-9-512
75-9-402(5), (6)	75-9-502
75-9-402(7)	75-9-503(a)(4), 75-9-507
75-9-402(8)	75-9-506
75-9-403(1)	75-9-516(a)
75-9-403(2)	75-9-515
75-9-403(3)	75-9-515, 75-9-522
75-9-403(4)	75-9-519
75-9-403(5)	75-9-525
75-9-403(6)	75-9-515
75-9-403(7)	75-9-519
75-9-404	75-9-513
75-9-405	75-9-514, 75-9-519
75-9-406	75-9-512
75-9-407	75-9-523
75-9-408	75-9-505
75-9-501(1), (2)	75-9-601
75-9-501(3)	75-9-602, 75-9-603
75-9-501(4)	75-9-604
75-9-501(5)	75-9-601
75-9-502	75-9-607, 75-9-608
75-9-503	75-9-609
75-9-504(1)	75-9-610, 75-9-615
75-9-504(2)	75-9-615
75-9-504(3)	75-9-610, 75-9-611, 75-9-624
75-9-504(4)	75-9-617
75-9-504(5)	75-9-618

FORMER ARTICLE 9	REVISED ARTICLE 9
75-9-505	75-9-620, 75-9-621, 75-9-624
75-9-506	75-9-623, 75-9-624
75-9-507	75-9-625, 75-9-627

OTHER CODE SECTIONS	REVISED ARTICLE 9
75-2-326(3)	75-9-102
75-2A-303(3)	75-9-407
75-2A-307(2)(b) and (c)	75-9-317
75-2A-307(3)	75-9-321
75-2A-307(4)	75-9-323

TABLE INDICATING SOURCES OR DERIVATIONS OF REVISED ARTICLE 9 SECTIONS AND CONFORMING AMENDMENTS

REVISED ARTICLE 9	FORMER ARTICLE 9
75-9-101	75-9-101
75-9-102	75-9-105, 75-9-106, 75-9-109, 75-9-115(1)(a)-(d), (f), 75-9-301(3), 75-9-306(1), 75-2-326(3)
75-9-103	75-9-107
75-9-104 (New)	Derived from 75-8-106
75-9-105 (New)	Derived from 75-8-106
75-9-106	75-8-106 and 75-9-115(1)(e)
75-9-107 (New)	Derived from 75-8-106
75-9-108	75-9-110, 75-9-115(3)
75-9-109	75-9-102, 75-9-104
75-9-110	75-9-113
75-9-201	75-9-201, 75-9-203(4)
75-9-202	75-9-202
75-9-203	75-9-203, 75-9-115(2), (6)
75-9-204	75-9-204
75-9-205	75-9-205
75-9-206	75-9-116
75-9-207	75-9-207
75-9-208 (New)	
75-9-209 (New)	
75-9-210	75-9-208
75-9-301	75-9-103(1)(a), (b), 75-9-103(3)(a), (b), 75-9-103(4), 75-9-103(5) substantially modified
75-9-302 (New)	
75-9-303	75-9-103(2)(a), (b), substantially revised
75-9-304 (New)	Derived in part from 75-8-110(e) and 75-9-305 and former 75-9-103(6)
75-9-305	75-9-103(6)
75-9-306 (New)	Derived in part from 75-8-110(e) and 75-9-305 and former 75-9-103(6)
75-9-307	75-9-103(3)(d), as substantially revised
75-9-308	75-9-303, 75-9-115(2)
75-9-309	75-9-302(1), 75-9-115(4)(c), (d), 75-9-116
75-9-310	75-9-302(1), (2)
75-9-311	75-9-302(3), (4)
75-9-312	75-9-115(4) and 75-9-304, with additions and some changes
75-9-313	75-9-305, 75-9-115(6)

REVISED ARTICLE 9	FORMER ARTICLE 9
75-9-314 (New in part)	75-9-115(4) and derived from 75-8-106
75-9-315	75-9-306
75-9-316	75-9-103(1)(d), (2)(b), (3)(e), as modified
75-9-317	75-9-301, 75-2A-307(2)
75-9-318 (New)	
75-9-319 (New)	
75-9-320	75-9-307
75-9-321	75-2A-103(1)(o), 75-2A-307(3)
75-9-322	75-9-312(5), (6)
75-9-323	75-9-301(4), 75-9-307(3), 75-9-312(7), 75-2A-307(4)
75-9-324	75-9-312(3), (4)
75-9-325 (New)	But see 75-9-402(7)
75-9-326 (New)	But see 75-9-402(7)
75-9-327	Derived from 75-9-115(5)
75-9-328	75-9-115(5)
75-9-329 (New)	Loosely modeled after former 75-9-115(5). See also 75-5-114 and 75-5-118.
75-9-330	75-9-308
75-9-331	75-9-309
75-9-332 (New)	But see Comment 2(c) to 75-9-306
75-9-333	75-9-310
75-9-334	75-9-313
75-9-335 (New)	Section replaces former 75-9-314
75-9-336 (New)	Section replaces former 75-9-315
75-9-337	Derived from 75-9-103(2)(d)
75-9-338 (New)	
75-9-339	75-9-316
75-9-340 (New)	
75-9-341 (New)	
75-9-342 (New)	Derived from 75-8-106(g)
75-9-401	75-9-311
75-9-402	75-9-317
75-9-403	75-9-206
75-9-404	75-9-318(1)
75-9-405	75-9-318(2)
75-9-406	75-9-318(3), (4)
75-9-407	75-2A-303
75-9-408 (New)	
75-9-409 (New)	See also 75-5-114
75-9-501	Derived from former 75-9-401
75-9-502	75-9-402(1), (5), (6)
75-9-503 (New)	Subsection (a)(4), (b) and (c) derive from former 75-9-402(7); otherwise, new
75-9-504	75-9-402(1)
75-9-505	75-9-408
75-9-506	75-9-402(8)
75-9-507	75-9-402(7)
75-9-508 (New)	But see 75-9-402(7)
75-9-509 (New)	
75-9-510 (New)	
75-9-511 (New)	
75-9-512	75-9-402(4)
75-9-513	75-9-404

REVISED ARTICLE 9	FORMER ARTICLE 9
75-9-514	75-9-405
75-9-515	75-9-403(2), (3), (6)
75-9-516 (Basically New)	Subsection (a) is former 75-9-403(1); the remainder is new
75-9-517 (New)	
75-9-518 (New)	
75-9-519	75-9-403(4), (7); 75-9-405(2)
75-9-520 (New)	
75-9-521 (New)	
75-9-522	75-9-403(3), revised substantially
75-9-523	75-9-407, subsections (d) and (e) are new
75-9-524 (New)	Derived from 75-4-109
75-9-525	Various sections of former Part 4 (former 75-9-401 through 75-9-410, pertaining to Filing)
75-9-526 (New)	Subsection (b) derives in part from the Uniform Consumer Credit Code (1974)
75-9-527 (New)	Derived in part from the Uniform Consumer Credit Code (1974)
75-9-601	75-9-501(1), (2), (5)
75-9-602	75-9-501(3)
75-9-603	75-9-501(3)
75-9-604	75-9-501(4), 75-9-313(8)
75-9-605 (New)	
75-9-606 (New)	
75-9-607	75-9-502, subsections (b), (d), and (e) are new
75-9-608	Subsection (a) is new. Subsection (b) derives from former 75-9-502(2)
75-9-609	75-9-503
75-9-610	75-9-504(1), (3)
75-9-611	75-9-504(3)
75-9-612 (New)	
75-9-613 (New)	
75-9-614 (New)	
75-9-615	75-9-504(1), (2)
75-9-616 (New)	
75-9-617	75-9-504(4)
75-9-618	75-9-504(5)
75-9-619 (New)	
75-9-620	75-9-505
75-9-621	75-9-505
75-9-622 (New)	
75-9-623	75-9-506
75-9-624	75-9-504(3), 75-9-505, 75-9-506
75-9-625	75-9-507
75-9-626 (New)	
75-9-627	75-9-507(2)
75-9-628 (New)	
75-9-701	No comparable provision in Article 9 (See Article 10)
75-9-702	No comparable provision in Article 9 (See Article 10)

REVISED ARTICLE 9	FORMER ARTICLE 9
75-9-703	No comparable provision in Article 9 (See Article 10)
75-9-704	No comparable provision in Article 9 (See Article 10)
75-9-705	No comparable provision in Article 9 (See Article 10)
75-9-706	No comparable provision in Article 9 (See Article 10)
75-9-707	No comparable provision in Article 9 (See Article 10)

Part 1.

General Provisions.

Subpart 1. Short Title, Definitions, and General Concepts..................75-9-101
Subpart 2. Applicability of Article..75-9-109

Editor's Note — Many of the notes found under this part originated with the prior version of Chapter 9 which was revised in 2001. They have been moved to their current location at the direction of Codification Counsel. Some of the sections of the Uniform Commercial Code referenced in case notes under "Judicial Decisions" were current when the cases were decided but may have been revised or repealed since then. Cases decided under former law are clearly identified.

Subpart 1.

Short Title, Definitions, and General Concepts.

Sec.
75-9-101. Short title.
75-9-102. Definitions and index of definitions.
75-9-103. Purchase-money security interest; application of payments; burden of establishing.
75-9-103A. "Production-money crops"; "production-money obligation"; production-money security interest; burden of establishing.
75-9-104. Control of deposit account.
75-9-105. Control of electronic chattel paper.
75-9-106. Control of investment property.
75-9-107. Control of letter-of-credit right.
75-9-108. Sufficiency of description.

§ 75-9-101. Short title.

This article may be cited as Uniform Commercial Code — Secured Transactions.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — Rights of secured party or lienholder in forfeiture proceedings pursuant to alcoholic beverage control law, see §§ 67-1-93, 67-1-95.

Disbursement of proceeds to bona fide lienholders, secured parties, or other interested parties following public auction of forfeited property under alcoholic beverage control law, see § 67-1-97.

Comparable Laws from other States — Alabama: Code of Ala. § 7-9A-101 et seq.
Alaska: Alaska Stat. § 45.29.101 et seq.
Arizona: A.R.S. § 47-9101 et seq.
Arkansas: A.C.A. § 4-9-101 et seq.
California: Cal U Com Code § 9101 et seq.
Colorado: C.R.S. 4-9-101 et seq.
Connecticut: Conn. Gen. Stat. § 42a-9-101 et seq.
Delaware: 6 Del. C. § 9-101 et seq.
District of Columbia: D.C. Code § 28:9-101 et seq.
Florida: Fla. Stat. § 679.1011 et seq.
Georgia: O.C.G.A. § 11-9-101 et seq.
Hawaii: HRS § 490:9-101 et seq.
Idaho: Idaho Code § 28-9-101 et seq.
Illinois: 810 ILCS 5/9-101 et seq.
Indiana: Burns Ind. Code Ann. § 26-1-9.1-101 et seq.
Iowa: Iowa Code § 554.9101 et seq.
Kansas: K.S.A. § 84-9-101 et seq.
Kentucky: KRS § 355.9-101 et seq.
Louisiana: La. R.S. § 10:9-101 et seq.
Maine: 11 M.R.S. § 9-1101 et seq.
Maryland: Md. COMMERCIAL LAW Code Ann. § 9-101 et seq.
Massachusetts: ALM GL ch. 106, § 9-101 et seq.
Michigan: MCLS § 440.9101 et seq.
Minnesota: Minn. Stat. § 336.9-101 et seq.
Missouri: § 400.9-101 R.S.Mo. et seq.
Montana: 30-9A-101, MCA et seq.
Nebraska: R.R.S. Neb. (U.C.C.) § 9-101 et seq.
Nevada: Nev. Rev. Stat. Ann. § 104.9101 et seq.
New Hampshire: RSA 382-A:9-101 et seq.
New Jersey: N.J. Stat. § 12A:9-101 et seq.
New Mexico: N.M. Stat. Ann. § 55-9-101 et seq.
New York: NY CLS UCC § 9-101 et seq.
North Carolina: N.C. Gen. Stat. § 25-9-101 et seq.
North Dakota: N.D. Cent. Code, § 41-09-01 et seq
Ohio: ORC Ann. 1309.01 et seq.
Oklahoma: 12A Okl. St. § 1-9-101 et seq.
Oregon: ORS § 79.0101 et seq.
Pennsylvania: 13 Pa.C.S. § 9101 et seq.
Rhode Island: R.I. Gen. Laws § 6A-9-101 et seq.
South Carolina: S.C. Code Ann. § 36-9-101 et seq.
South Dakota: S.D. Codified Laws § 57A-9-101 et seq.
Tennessee: Tenn. Code Ann. § 47-9-101 et seq.
Texas: Tex. Bus. & Com. Code § 9.101 et seq.
Utah: Utah Code Ann. § 70A-9a-101 et seq.
Vermont: 9A V.S.A. § 9-101 et seq.
Virgin Islands: 11A V.I.C. § 9-101 et seq.
Virginia: Va. Code Ann. § 8.9A-101 et seq.
Washington: Rev. Code Wash. (ARCW) § 62A.9A-101 et seq.
West Virginia: W. Va. Code § 46-9-101 et seq.
Wisconsin: Wis. Stat. § 409.101 et seq.
Wyoming: Wyo. Stat. § 34.1-9-101 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. Agricultural liens.
2.-5. [Reserved for future use.]

II. Under Former § 75-9-101.

6. In general; relationship to other laws.
7. Notice of public sale.
8. Priority rights.
9. Conditional sales.
10. Construction contracts.
11. Leases.
12. —Leases intended as security.
13. Real estate contracts.
14. Sale of accounts or chattel paper.
15. Security interest.
16. —Created by contract.
17. Surety.
18. —Subrogation by surety.
19. Trust receipts.

I. Under Current Law.

1. Agricultural liens.

Two lessors did not have priority over a bank with a perfected lien on a lessee's government payments, even though the bank had actual notice of the leases before it loaned money to the lessee as: (1) Miss. Code Ann. § 75-9-109(a)(2) applied to agricultural liens; (2) perfection of agricultural liens was required under Miss. Code Ann. §§ 89-7-51(1) and 75-9-101 et seq.; (3) the lessors did not perfect their liens; (4) there was no fact issue as to whether there was confidential relationship between the bank and the lessors for constructive trust purposes; and (5) the bank was not unjustly enriched as it was entitled to apply the government payments to the lessee's loan. Pair A Dice Farms, Inc. v. InSouth Bank of Covington, 118 So. 3d 165 (Miss. Ct. App. Dec. 11, 2012), writ of certiorari denied by 2013 Miss. LEXIS 387 (Miss. July 25, 2013), writ of certiorari denied by 117 So. 3d 330, 2013 Miss. LEXIS 388 (Miss. 2013).

2.-5. [Reserved for future use.]

II. Under Former § 75-9-101.

6. In general; relationship to other laws.

Repossession and disposition procedures used by secured party did not comply with those provided in Article 9 of UCC where, after repossessing automobiles, notice of sale was sent by registered mail to each defaulting purchaser advising him that his car would be sold at public auction to highest bidder on specified date for not less than specified minimum amount, where only public notice of sale was blackboard placed in office of secured party listing date of sale, initials of defaulting purchaser, and year and make of automobile, where secured party did not conduct sale at public auction, as stated in notice of sale, but on date of sale credited debtor's account with minimum price stated in notice of sale and then proceeded to collect deficiency by taking judgment on cognovit notes signed by debtors, and where secured party then obtained repossession titles for automobiles involved and resold them from its used car lot, at retail, to other consumers at substantially higher prices than amounts credited. Although UCC § 9-505(2) authorizes secured party in possession of repossessed goods to retain those goods in satisfaction of debtor's obligations, provided written notice of such intention is sent to debtor and debtor does not object within 30 days, and although debtors in present case made no objection to proceedings, secured party did not comply with provisions of UCC § 9-504 and, thus, was not entitled to deficiency judgment as permitted under UCC § 9-504(2). Miles v. N.J. Motors, Inc., 44 Ohio App. 2d 351, 338 N.E.2d 784 (1975).

7. Notice of public sale.

Under UCC § 6-103(3) [Repealed], public liquidation sale of debtor's inventory by federal Small Business Administration was not subject to provisions of UCC Article 6 dealing with bulk transfers (UCC § 6-101 et seq. [Repealed]), but was governed by UCC Article 9 dealing with secured transactions (UCC § 9-101 et seq). United States ex rel. Small Bus. Admin. v. Gore, 437 F. Supp. 344 (E.D. Pa. 1977) (applying Pennsylvania law).

Under provisions of consumer credit act prohibiting use of negotiable instruments in consumer credit transactions, instrument entitled "Retail Installment Agreement (Security Interest)," although it contained necessary elements of negotiable instrument set out in UCC § 3-104, was not negotiable instrument, but was retail installment contract and security agreement subject to provisions of Article 9 of UCC, where instrument was drawn by creditor regulated by consumer credit act and contained matters required by consumer credit act, and where bulk of its terms provided for retention of title and preservation of purchase money security interest as prescribed by Article 9. Jefferson v. Mitchell Select Furn. Co., 56 Ala. App. 259, 321 So. 2d 216 (Civ. App. 1975).

Where secured party sold automatic truck and trailer washer to company which operated "truck stop" business and retained purchase money security interest therein, where debtor company sold truck stop business to transferee, but excluded from sale automatic truck and trailer washer, where debtor company subsequently defaulted and secured party foreclosed on its security interest in washer pursuant to Article 9 of UCC, and where secured party then sought to recover deficiency from transferee under provisions of Article 6: (1) secured creditor was entitled to benefits of Article 6 of Uniform Commercial Code relating to bulk transfers, and was not limited solely to remedies provided in Article 9 relating to secured transactions; (2) fact that no notice was given to secured party as is required by UCC § 6-105, although bulk transfer provisions of UCC were otherwise substantially complied with and transferee knew that secured party was creditor of debtor company, would ordinarily render transfer ineffective as to secured party; (3) however, material issue of fact existed as to whether truck stop business was enterprise whose "principal business is the sale of merchandise from stock," as provided in UCC § 6-102(3), and thus subject to bulk transfer provisions of UCC. Automatic Truck & Trailer Wash Ctrs., Inc. v. Eastamp, Inc., 320 So. 2d 7 (Fla. App. 1975).

8. Priority rights.

Exclusion from Uniform Commercial Code, Article 9 protection means that the claimant to a right of set-off is not precluded from this right merely because another claimant to the security has perfected its interest in the security by taking possession of it. The right of set-off is separate from the priority provisions of Article 9. Bank of Crystal Springs v. First Nat'l Bank, 427 So. 2d 968 (Miss. 1983).

Where financing statements filed with secretary of state alone and not filed locally did not protect security interest, lien creditor had priority over holder of security interests. Package Mach. Co. v. Cosden Oil & Chem. Co., 51 A.D.2d 771 (2d Dep't 1976).

9. Conditional sales.

Provision in security agreement executed on purchase of new automobile which provided that until indebtedness was fully paid, "seller has and shall retain title to and a security interest in the property" did not violate federal Truth-in-Lending Act and Regulation Z, since (1) Uniform Commercial Code, in UCC § 1-201(37), now provides universal definition of term "security interest," (2) Uniform Commercial Code was designed to replace confusingly numerous security devices that prevailed under pre-Code practice, and (3) it would therefore be anomalous and counterproductive of UCC objectives to interpret Regulation Z, which requires disclosure of "type of any security interest held," as requiring lender to specify particular security device employed. In such case, it was sufficient that security agreement in issue contained reference to a "security interest" in property described in the agreement that was enforceable under the Uniform Commercial Code, and statement in the agreement that seller retained "title" to such property, although unnecessary and irrelevant in light of UCC § 9-102(1) and (2) and § 9-302(3), did not make lender's disclosure statement confusing or misleading. Drew v. Flagship First Nat'l Bank, 448 F. Supp. 434 (M.D. Fla. 1977) (construing Florida law).

Bankruptcy judge was justified in holding that purported lease transaction was conditional sale, that contract executed by bankrupt and typewriter dealer whereby bankrupt agreed to pay $15.00 per month for 22 month term and was given option to purchase typewriter for $6.55 at end of term was security interest required by UCC to be filed, and that, in view of absence of filing, title to machine vested in bankruptcy trustee, where it was clear that transaction was understood to be sale by both bankrupt and by typewriter dealer's employees who dealt with him; among other things, bankrupt came to dealer's place of business to buy typewriter, dealer intended to sell him typewriter, and so-called "lease-ownership" contract was used because bankrupt preferred it. In re Shell, 390 F. Supp. 273 (E.D. Ark. 1975) (applying Arkansas law).

10. Construction contracts.

Subcontractor protected under mechanics' lien trust statute prevailed over lending bank's prior perfected security interest in general contractor's accounts receivable where bank failed to establish whether, and to what extent, general contractor used loan proceeds to pay subcontractor. National Bank v. Eames & Brown, Inc., 396 Mich. 611, 242 N.W.2d 412 (1976).

Although bank had perfected security interest in all present and future accounts receivable of contractor in accord with UCC Article 9 prior to time contractor entered into construction contract, where contractor entered into subcontract and subcontractor furnished material and services for project, and where funds owed to contractor under prime contract were paid directly to subcontractor pursuant to statute which created trust fund for benefit of subcontractors and materialmen under private construction contracts, bank was not entitled to recover such funds except to extent money provided by bank was in fact used to pay laborers, subcontractors or materialmen on specific job in question. National Bank v. Eames & Brown, Inc., 396 Mich. 611, 242 N.W.2d 412 (1976).

11. Leases.

Lease of radio equipment for five years at agreed price, with title to property remaining in lessor and with possession of equipment to be returned to lessor at expiration of lease, did not constitute "security interest"; thus, Article 9 of Code did not apply and parties' conduct was governed by terms of lease, which did not require sale of equipment upon default, nor crediting proceeds of sale against lessee's indebtedness, but instead provided that upon default lessor could retain all payments made and recover full unpaid balance of term rental. McGuire v. Associates Capital Servs. Corp., 133 Ga. App. 408, 210 S.E.2d 862 (1974).

12. —Leases intended as security.

Automobile lease transaction which in effect required lessee to purchase vehicle at prearranged price on termination of lease, and which conferred on lessee full benefit of actual sale price of vehicle when it was sold on wholesale market pursuant to terms of lease, was sufficiently analogous to secured sale to subject transaction to provisions of UCC Art 9. Pierce v. Leasing Int'l, Inc., 142 Ga. App. 371, 235 S.E.2d 752 (1977), opinion after remand from supreme court, 144 Ga. App. 312, 241 S.E.2d 31 (1977).

Notwithstanding language of "lease-purchase agreement," it was clear that credit corporation and purported lessee of dump truck contemplated entering into secured transaction under UCC § 9-101 et seq. where financing statement listed credit corporation as secured party and purported lessee as debtor, and covered dump truck as secured item, where motor vehicle certificate of ownership listed purported lessee as owner and credit corporation as secured party and where purported lessee had option under "lease" to purchase truck for one dollar after making all installment payments. GECC v. Castiglione, 142 N.J. Super. 90, 360 A.2d 418 (1976).

Bankruptcy judge was justified in holding that purported lease transaction was conditional sale, that contract executed by bankrupt and typewriter dealer whereby bankrupt agreed to pay $15.00 per month for 22 month term and was given option to purchase typewriter for $6.55 at end of term was security interest required by UCC to be filed, and that, in view of absence of filing, title to machine vested in bankruptcy trustee, where it was clear that transaction was understood to be sale by both bankrupt and by typewriter dealer's employees who dealt with him; among other things, bankrupt came to dealer's place of business to buy typewriter, dealer intended to sell him typewriter, and so-called "lease-ownership" contract was used because bankrupt preferred it. In re Shell, 390 F. Supp. 273 (E.D. Ark. 1975).

Lease of airplane with option to purchase would be regarded as secured transaction, subject to provisions of UCC Article 9 relating to default and repossession of collateral, where total monthly payment required, plus downpayment and option payment, approximately equalled originally agreed value of $22,000 for airplane and where $100 purchase option was nominal. Kupka v. Morey, 541 P.2d 740 (Alaska 1975).

13. Real estate contracts.

UCC § 9-104(j) provides that UCC Art 9 does not apply to creation or transfer of interest in real estate, including lease or rents thereunder. Thus, in action by assignee of right to receive royalties and rent payments arising from lease of rock quarry against judgment lien creditors of assignor of such right and garnishees in possession of such rents and royalties, rents and royalties in garnishees' possession were not subject to UCC Art 9, and judgment lien creditors were not prohibited by UCC § 9-301 from taking priority to such funds over assignee who had unperfected security interest in funds, even though judgment lien creditors had knowledge of assignee's security interest at time they became lien creditors. Union Livestock Yards, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 552 S.W.2d 392 (Tenn. Ct. App. 1976).

14. Sale of accounts or chattel paper.

In action for breach of contract under which defendant had agreed to pay plaintiff 50 per cent of all invoices submitted to defendant by one of its suppliers, but where defendant refused to make further payments under contract after it was notified by bank that supplier had previously assigned its accounts receivable to bank, and where defendant filed third party complaint against bank, bank was entitled to summary judgment in its favor and against defendant on third party complaint; bank had fully complied with all applicable provisions of UCC and had perfected security interest in supplier's accounts receivable before defendant entered into agreement with plaintiff and, thus, any rights of plaintiff against defendant or its supplier were subservient and unrelated to bank's rights against supplier. Rivan Die Mold Corp. v. Stewart-Warner Corp., 26 Ill. App. 3d 637, 325 N.E.2d 357 (1st Dist. 1975).

15. Security interest.

Where meat packer's operations were financed by secured creditor who had properly perfected security interest in meat packer's assets, including after-acquired property, where cattle sellers delivered cattle to meat packer on "grade and yield basis," where checks were subsequently issued to sellers, but before checks were paid, secured party, believing itself to be insecure, refused to advance more funds to meat packer for operation of plant, and where meat packer then filed petition in bankruptcy, interest of unpaid seller was subordinate to interest of secured creditor, and seller who did not attempt to reclaim cattle until year after filing petition for bankruptcy, was not entitled to either reclamation of cattle or proceeds from sale of slaughtered meat. Stowers v. Mahon, 526 F.2d 1238 (5th Cir. Tex. 1976), cert. denied, 429 U.S. 834, 97 S. Ct. 98, 50 L. Ed. 2d 99 (1976) (applying Texas law).

Secured party possessed perfected security interest within UCC Article 9 and accordingly occupied position of priority over government's tax lien where debtor obtained financing for construction project from secured party, assigned to secured party its contract rights, including right of payment, and prior to tax lien filing, secured party filed financing statement covering its security interest in debtor's contract rights. B.F. Goodrich Co. v. Simco, Inc., 406 F. Supp. 200 (M.D. Ga. 1976) (applying Georgia law).

Article 9 applies only to consensual security interests; thus, since surety's interest, arising in connection with bonding of public work's contractor, was not consensual, but derived from status inherent in being surety, Article 9 did not apply and conflict between rights of surety and secured third party would be resolved without reference to Article 9. First Vt. Bank & Trust Co. v. Village of Poultney, 134 Vt. 28, 349 A.2d 722 (1975).

16. —Created by contract.

Where meat packer's operations were financed by secured creditor who had properly perfected security interest in meat packers' assets, including after-acquired property, where cattle sellers delivered cattle to meat packer on "grade and yield basis" (cattle were first slaughtered, chilled and then graded before purchase price was calculated), where checks were subsequently issued to sellers, but before checks were paid, secured party, believing itself to be insecure, refused to advance more funds to meat packer for operation of plant, and where meat packer then filed petition in bankruptcy, and cattle sellers sought to reclaim cattle or right to proceeds from sale of slaughtered meat: (1) course of conduct prescribed by Packers and Stockyards Act and regulations issued thereunder, coupled with undisputed intent of cattle sellers, compelled conclusion that sale of cattle was cash and not credit transaction; (2) strict application of ten-day limitation on right to reclaim cattle for some substantial period of time after filing of petition for bankruptcy was warranted inasmuch as such limitation is absolute; (3) however slight or tenuous or marginal was sellers' interest, it was necessarily great enough to permit attachment of secured party's lien; (4) even if evidence had established that secured party knew of meat packer's nonpayment its status as good faith purchaser would be unaffected; and (5) the perfected security interest was superior to the interest of the seller. Stowers v. Mahon, 526 F.2d 1238 (5th Cir. Tex. 1976), cert. denied, 429 U.S. 834, 97 S. Ct. 98, 50 L. Ed. 2d 99 (1976) (applying Texas law).

17. Surety.

Article 9 applies only to consensual security interests; thus, since surety's interest, arising in connection with bonding of public work's contractor, was not consensual, but derived from status inherent in being surety, Article 9 did not apply and conflict between rights of surety and secured third party would be resolved without reference to Article 9. First Vt. Bank & Trust Co. v. Village of Poultney, 134 Vt. 28, 349 A.2d 722 (1975).

18. —Subrogation by surety.

Failure of contractor's surety to record indemnity agreement which assigned to surety, in event of contractor's failure to perform, all rights (including right to progress payments) under any future construction contracts that contractor might enter into did not defeat surety's equitable right to subrogation with respect to progress payments earned prior to contractor's default on contract, as against claim to such payments of bank which had recorded, in compliance with Uniform Commercial Code, contractor's earlier assignment to bank of proceeds from such future contracts. Since Uniform Commercial Code protects only contract rights and not rights that arise by operation of law, and since surety's equitable subrogation right arose by operation of law, surety in such case was not required by Uniform Commercial Code to file financing statement to preserve its subrogation right in event of principal's default. First Alabama Bank v. Hartford Accident & Indem. Co., 430 F. Supp. 907 (N.D. Ala. 1977) (applying Alabama law).

Surety on contractor's performance and payment bonds who completed contractor's performance and payed contractor's debts after contractor defaulted was entitled to payments due contractor under contract with United States by doctrine of equitable subrogation, as opposed to contractor's trustee in bankruptcy, notwithstanding surety did not perfect its interest in accord with Article 9 of UCC; doctrine of equitable subrogation in suretyship cases does not create security interest under UCC and has not been displaced or controlled by Article 9. McAtee v. United States Fid. & Guar. Co., 401 F. Supp. 11 (N.D. Fla. 1975) (applying Florida law).

Terms of Uniform Commercial Code do not abrogate, modify, affect or abridge performing surety's rights under equitable doctrine of subrogation, and subrogation claim thereunder does not lose its priority rank when it is not filed pursuant to requirements of Code. Mid-Continent Cas. Co. v. First Nat'l Bank & Trust Co., 531 P.2d 1370 (Okla. 1975).

Sureties, who made performance bond securing contractor's completion of construction project and payment of laborers and materialmen, and who became subrogated to rights of claimants on bond, had priority in contract rights of defaulting contractor as against party having security interest in contractor's accounts receivables who had filed Article 9 financing statement, notwithstanding sureties never filed financing statement. Stevlee Factors, Inc. v. State, 136 N.J. Super. 461, 346 A.2d 624 (1975), aff'd, 144 N.J. Super. 346, 365 A.2d 713 (1976).

19. Trust receipts.

Article 9 of UCC includes trust receipts and did not abolish them; consequently, guarantee agreement executed by guarantors covered indebtedness of debtor arising out of its trust receipt with creditor. American Fiber Glass, Inc. v. GECC, 529 S.W.2d 298 (Tex. Civ. App. 1975).

RESEARCH REFERENCES

ALR. Construction and effect of UCC Art 9, dealing with secured transactions, sales of accounts, contract rights, and chattel paper. 30 A.L.R.3d 9.

Right of secured creditor to have set aside fraudulent transfer of other property by his debtor. 8 A.L.R.4th 1123.

Applicability of Article 9 of Uniform Commercial Code to assignment of rights under real-estate sales contract, lease agreement, or mortgage as collateral for separate transaction. 76 A.L.R.4th 765.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 1 et seq.

Law Reviews. Clement, Jr., Enforcing Security Interests in Personal Property in Mississippi. 67 Miss. L. J. 44, Fall, 1997.

Dyer, Symposium on the Uniform Commercial Code: The Impact of Dilution on Asset Securitization: Commercial Separation Anxiety. 66 Miss. L. J. 407, Winter, 1996.

The recent erosion of the secured creditor's rights through cases, rules and statutory changes in bankruptcy law, 53 Miss. L. J. 389, September, 1983.

§ 75-9-102. Definitions and index of definitions.

(a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to

pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute

permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is One Thousand Dollars ($1,000.00) or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in Section 75-7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to Section 75-9-519(a).

(37) "Filing office" means an office designated in Section 75-9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to Section 75-9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 75-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims,

deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) [Reserved]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, (v) farm-raised fish produced in fresh water according to the usual and customary techniques of commercial agriculture, (vi) manufactured homes and (vii) marine vessels (herein defined as every type of watercraft used, or capable of being used, as a means of transportation on water) including both marine vessels under construction, including engines and all items of equipment installed or to be installed therein, whether such vessels are being constructed by the shipbuilder for his own use or for sale (said vessels under construction being classified as inventory within the meaning of Section 75-9-102(48)), and marine vessels after completion of construction so long as such vessels have not become "vessels of the United States" within the meaning of the Ship Mortgage Act of 1920, 46 USCS, Section 911(4), as same is now written or may hereafter be amended (said completed vessels being classified as equipment within the meaning of Section 75-9-102(33)). The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or

assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation. "Mortgage" shall mean and include a deed of trust.

(56) "New debtor" means a person that becomes bound as debtor under Section 75-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in Section 75-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 75-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B), or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds," except as used in Section 75-9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(64A) "Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

(64B) "Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(64C) "Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops, and protecting them from damage or disease.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 75-9-620, 75-9-621, and 75-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under Section 75-2-401, 75-2-505, 75-2-711(3), 75-2A-508(5), 75-4-210, or 75-5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other articles apply to this article:

"Applicant"	Section 75-5-102
"Beneficiary"	Section 75-5-102
"Broker"	Section 75-8-102
"Certificated security"	Section 75-8-102
"Check"	Section 75-3-104
"Clearing corporation"	Section 75-8-102
"Contract for sale"	Section 75-2-106
"Control"	Section 75-7-106
"Customer"	Section 75-4-104
"Entitlement holder"	Section 75-8-102
"Financial asset"	Section 75-8-102
"Holder in due course"	Section 75-3-302
"Issuer" (with respect to a letter of credit or letter-of-credit right	Section 75-5-102
"Issuer" (with respect to a security)	Section 75-8-201
"Issuer" (with respect to	

documents of title)	Section 75-7-102
"Lease"	Section 75-2A-103
"Lease agreement"	Section 75-2A-103
"Lease contract"	Section 75-2A-103
"Leasehold interest"	Section 75-2A-103
"Lessee"	Section 75-2A-103
"Lessee in ordinary course of business"	Section 75-2A-103
"Lessor"	Section 75-2A-103
"Lessor's residual interest"	Section 75-2A-103
"Letter of credit"	Section 75-5-102
"Merchant"	Section 75-2-104
"Negotiable instrument"	Section 75-3-104
"Nominated person"	Section 75-5-102
"Note"	Section 75-3-104
"Proceeds of a letter of credit"	Section 75-5-114
"Prove"	Section 75-3-103
"Sale"	Section 75-2-106
"Securities account"	Section 75-8-501
"Securities intermediary"	Section 75-8-102
"Security"	Section 75-8-102
"Security certificate"	Section 75-8-102
"Security entitlement"	Section 75-8-102
"Uncertificated security"	Section 75-8-102

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

SOURCES: Former 1972 Code § 75-9-102 [Codes, 1942, § 41A:9-102; Laws, 1966, ch. 316, § 9-102; Laws, 1977, ch. 452, § 5] is now found in comparable provisions enacted at § 75-9-109 by Laws, 2001, ch. 495, § 1. Present § 75-9-102 was derived from former 1972 Code §§ 75-9-105 [Codes, 1942, § 41A:9-105; Laws, 1966, ch. 316, § 9-105; Laws, 1977, ch. 452, § 8; Laws, 1978, ch. 356, § 1; Laws, 1990, ch. 384, § 48; Laws, 1996, ch. 460, § 23; Laws, 1996, ch. 468, § 57], 75-9-106 [Codes, 1942, § 41A:9-106; Laws, 1966, ch. 316, § 9-106; Laws, 1977, ch. 452, § 9; Laws, 1996, ch. 460, § 24; Laws, 1996, ch. 468, § 58], 75-9-109 [Codes, 1942, § 41A:9-109; Laws, 1966, ch. 316, § 9-109], 75-9-115 [Laws, 1996, ch. 468, § 59], 75-9-301 [Codes, 1942, § 41A:9-301; Laws, 1966, ch. 316, § 9-301; Laws, 1977, ch. 452, § 14; Laws, 1986, ch. 343, § 1; Laws, 1996, ch. 468, § 62], and 75-9-306 [Codes, 1942, § 41A:9-306; Laws, 1966, ch. 316, § 9-306; Laws, 1977, ch. 452, § 18; Laws, 1996, ch. 468, § 67] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2002, ch. 453, § 4; Laws, 2006, ch. 527, § 59; Laws, 2007, ch. 355, § 35; Laws, 2007, ch. 381, § 35; Laws, 2010, ch. 506, § 40; Laws, 2013, ch. 451, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (a)(36), as amended by Laws of 2002, ch. 453. The reference to "Section 9-519(a)" was changed to "Section 75-9-519(a)." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (a)(7)(B) by substituting "associate with the record an electronic sound" for "associate with the record and electronic sound." The Joint Legislative Committee ratified the correction at its August 1, 2013, meeting.

Section 35 of ch. 355 Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 35 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 35 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — "Goods" with reference to sales, see § 75-2-105.

Sale of goods that are to be severed from realty, see § 75-2-107.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]
1. Account.
2. "Goods."
3. "Farm products."
4.-5. "Proceeds."
5. [Reserved for future use.]

II. Under Former § 75-9-105.

A. Decisions Under Uniform Commercial Code.

6. In general.
7. "Chattel paper."
8. "Collateral."
9. "Document."
10. "Debtor."
11. —Guarantor of obligation as debtor.
12. "Goods."
13. "Instrument."
14. "Security agreements."
15. —Financing statement as security agreement.
16. —With other documents.
17. —Ineffective security agreements.
18. —Promissory note as security agreement.
19. "Secured party."
20. Other terms.

B. Decisions Under Former Statutes.

21. In general.

III. Under Former § 75-9-106.

22. In general; "Account."
23. —Other terms distinguished.
24. "Contract right."
25. —Assignment of contract right.
26. —Other terms distinguished.
27. "General intangibles."
28. —Other terms distinguished.

IV. Under Former § 75-9-109.

29. In general.
30. "Consumer goods."
31. —Other terms distinguished.
32. —Items for personal use.
33. —Boats.
34. —Motor vehicles.
35. —Motor vehicles; personal use.
36. —Motor vehicles; dealer use.
37. —Miscellaneous items.
38. "Equipment."
39. —Construction equipment.
40. —Other terms distinguished.
41. —Farm machinery.
42. —Miscellaneous items.
43. "Farm products."
44. "Inventory."
45. —Other terms distinguished.
46. —Motor vehicles.
47. —Farm inventory.
48. —Miscellaneous.

I. Under Current Law.

1.-5. [Reserved for future use.]

1. Account.

Under Miss. Code Ann. § 75-4-104(3) and Miss. Code Ann. § 75-9-102(29), a customer's line of credit possibly qualified as an account, but not as a deposit account; thus, where a 2002 customer agreement applied to depository accounts but not to a customer's line of credit, and a 2004 customer agreements did not contain the required specific, retroactive language in the arbitration provisions, a bank could not compel the customer to arbitrate claims of tortious breach of contract and emotional distress, alleging that the bank and an insurer failed to pay benefits under a credit disability insurance policy. AmSouth Bank v. Quimby, 963 So. 2d 1145 (Miss. 2007).

2. "Goods."

Scope of 11 U.S.C.S. § 503(b)(9) is limited solely to goods and advertising; therefore, a creditor was not entitled to have its claim classified as an administrative expense because the debtor's purchase of advertising in the creditor's phone books did not constitute a good as defined under the plain language of U.C.C. § 9-102. In re Deer, — Bankr. —, 2007 Bankr. LEXIS 4676 (Bankr. S.D. Miss. June 14, 2007).

3. "Farm products."

4.-5. "Proceeds."

Production money security interest a lender held in a farmer's crops under the Food Security Act of 1985 took priority over a buyer's right to apply setoffs to cover the farmer's failure to fulfill one of his contracts; Miss. Code Ann. § 75-9-404 did not govern the case because the lender was not merely an assignee of the farmer's accounts, and proceeds that the lender was entitled to recover included the full value of the crops under the contracts. Guar. Bank & Trust Co. v. Agrex, Inc., — F.3d —, 2016 U.S. App. LEXIS 7731 (5th Cir. Apr. 28, 2016).

Miss. Code Ann. § 75-9-102 expressly contemplates a crop "to be grown" sometime in the future; the creditor's lien here, perfected through the security instruments executed by debtors prior to 2010, extended to the balance of proceeds remaining from the 2010 sweet potato crop. Debtors' proposed "roll over" scenario for 2011, without the consent of the creditor, provided no discernable adequate protection, as required by 11 U.S.C.S. § 363(e), for its interest in the 2010 crop proceeds. Moore v. Regions Bank (In re Moore), 465 B.R. 111 (Bankr. N.D. Miss. 2011).

5. [Reserved for future use.]

II. Under Former § 75-9-105.

A. Decisions Under Uniform Commercial Code.

6. In general.

One who has no interest in property cannot create security interest in it in favor of another under UCC. Cheney v. Palos Verdes Inv. Corp., 104 Idaho 897, 665 P.2d 661 (1983).

7. "Chattel paper."

A Pennsylvania bailment lease security agreement constitutes chattel paper as defined in subsec. (1)(b). Associates Disct. Corp. v. Old Freeport Bank, 421 Pa. 609, 220 A.2d 621 (1966).

8. "Collateral."

When a supplier stored equipment on a debtor's premises, the arrangement was at best that of a bailment and was not a consignment under Miss. Code Ann. § 75-9-102(a)(20) because the evidence established that the equipment was not delivered to the debtor for the purpose of a sale. Thus, the equipment did not become part of the debtor's inventory under Miss. Code Ann. § 75-9-102(a)(48), and a creditor's security interest against the debtor's inventory did not attach to it. In re Greenline Equip., Inc., 390 B.R. 576 (Bankr. N.D. Miss. 2008).

"Control and management" of the disposition of funds do not constitute "collateral" under UCC § 9-105(1)(c). Stockwell v. Bloomfield State Bank, 174 Ind. App. 307, 367 N.E.2d 42 (1977).

9. "Document."

Assignment of passbook savings account was governed by common law rather than Uniform Commercial Code, inasmuch as UCC § 9-104(1) specifically exempts transfer of interest in deposit account from its coverage and under UCC § 9-105(1)(e), deposit account includes passbook. Iser Elec. Co. v. Ingran Constr. Co., 48 Ill. App. 3d 110, 362 N.E.2d 771 (2d Dist. 1977).

10. "Debtor."

Context of UCC § 9-203 precludes construing "debtor" to mean owner of collateral for purposes of determining who must sign security agreement. United States Small Bus. Admin. v. Guaranty Bank & Trust Co., 874 F.2d 997 (5th Cir. 1989).

In action to determine priority of right to farm equipment (collateral) as between bankruptcy trustee and assignee-creditor with allegedly perfected security interest, where (1) partnership-debtor bought farm equipment from seller on October 25, 1974, (2) seller filed financing statement in Tallahatchie County, Mississippi, instead of Sunflower County, Mississippi, where partnership's property was located, (3) seller subsequently assigned sale contract and security agreement to plaintiff assignee-creditor, and (4) debtor thereafter became bankrupt, court held (1) that partnership can be debtor because (1) UCC § 9-105(1)(d) defines debtor as "person" who owes payment of secured obligation, (b) "person" under UCC § 1-201(30) includes "organization," and (c) "organization" under UCC § 1-201(28) includes "partnership," (2) that debtor-partnership's residence under UCC § 9-401(6) was its place of business, which was in Sunflower County, Mississippi, and not Tallahatchie County, Mississippi, (3) that under UCC § 9-401(1)(a), plaintiff's financing statement should have been filed in county of debtor's residence (Sunflower County), and (4) that as a result, plaintiff's security interest was unperfected because it was filed in wrong county. Ford Motor Credit Co. v. Weaver, 680 F.2d 451 (6th Cir. Tenn. 1982).

Buyer of business machines was not "debtor" of seller under UCC § 9-105(1) until execution and delivery of security interest agreement where buyer received machines to test usage prior to execution and delivery of agreements, and obtaining of outside financing by buyer was condition precedent to ultimate purchase; thus, financing statements filed within ten days after execution and delivery of purchase money security interest agreements complied with ten-day requirement of UCC § 9-312(4) and were entitled to priority over prior chattel mortgage security agreement containing after-acquired equipment security clause. In re Ultra Precision Indus., Inc., 503 F.2d 414 (9th Cir. Cal. 1974).

In action to recover possession of motor home that plaintiff secured party had sold to debtor under retail installment contract and security agreement, where (1) plaintiff, although authorized to file financing statement, did not do so before assigning installment contract and security agreement to bank, (2) after contract and security agreement had been assigned to bank, debtor transferred title to home to third-party purchaser, (3) such purchaser resold home to another third party who, in turn, resold it to defendant, (4) after first third-party purchaser had purchased home, bank filed financing statement that listed only original buyer of home as "debtor," and (5) on original buyer's default in making payments, bank reassigned installment contract and security agreement to plaintiff, which sought to replevy home from last third-party purchaser, court held (1) that even though bank was aware that title to home had been transferred to first third-party purchaser, bank nevertheless, on filing its financing statement, listed only original buyer as "debtor" on such statement, (2) that financing statement, as a result, failed under UCC §§ 9-402(1) and 9-105(1)(d) to identify "debtor" properly in situation where owner of collateral and obligor on financing agreement were not the same person, (3) that plaintiff's security interest was therefore not perfected, and (4) that since defendant third-party purchaser had purchased home out of ordinary course of business and without knowledge of plaintiff's unperfected security interest therein, defendant's ownership of home was free of such security interest under UCC § 9-301(1)(c). White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Although owner of property permitted debtor to use it as collateral for loan from secured party and valid security interest attached in favor of secured party under security agreement given by debtor, secured party failed to properly perfect its interest in that financing statement it filed did not contain any reference to owner of collateral; in view of provision of UCC § 9-105(1)(d), that term "debtor" may include both owner of collateral and obligor if context so requires, UCC § 9-402, subdivisions (1) and (3), requiring that financing statement contain "debtor's" name, must be construed as referring to both actual debtor and owner of collateral, thus requiring both names on financing statement to perfect security interest. K.N.C. Whsle., Inc. v. AWMCO, Inc., 56 Cal. App. 3d 315, 99 A.L.R.3d 473 (1st Dist. 1976).

Notice requirement of UCC § 9-504(3) refers to collateral, not to obligation, and "debtor" entitled to notice by that provision is owner of collateral; thus, maker of note was not entitled to notice of sale where automobile given as security for note was owned by his cosigner. New Haven Water Co. Emp. Credit Union v. Burroughs, 6 Conn. Cir. Ct. 709, 313 A.2d 82 (1973).

An automobile dealer who sells a conditional sales contract to a bank and at the same time executes an agreement which provides that in the event of default he will repurchase the contract for the unpaid balance is a debtor of the bank under the terms of ¶ (d) of subd (1) of this section. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

11. —Guarantor of obligation as debtor.

In action by bank seeking recovery under note and commercial equipment security agreement against guarantors, where bank sold collateral upon default prior to giving notice to guarantors and where guaranty agreement expressly waived notice of disposition of collateral, waiver clause was of no effect in that (1) guarantor is a debtor under definition of UCC § 9-105(1)(d), and (2) under UCC § 9-501(3), code provisions covering debtor's rights regarding disposition of collateral and redemption of collateral may not be waived. Barnett v. Barnett Bank, 345 So. 2d 804 (Fla. App. 1977), but see Ayares-Eisenberg Perrine Datsun v. Sun Bank, 455 So. 2d 525 (Fla. Ct. App. 1984).

Under UCC § 9-402(1), a financing statement must include the name and address of the debtor. In this connection, however, the term "debtor" is defined by UCC § 9-105(1)(d) to include both the owner of the collateral and the obligor on the financing agreement if the owner and the obligor are not the same person. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

A guarantor of payment of a secured party is entitled to the same notice of sale of the collateral as the debtor is entitled to (Uniform Commercial Code, § 9-504, subd [3]) since a guarantor is a "debtor" within the meaning of section 9-105 (subd [1], par [d]) of the Uniform Commercial Code which does not require the "debtor" to be the owner or have rights in the collateral. The debtor is only required to be an "obligor in any provision dealing with the obligation". It is imperative for the guarantor to receive notice of the dispositional sale in order to protect his right to reduce his potential liability at the sale. Requiring the secured party to give notice to the guarantor of the disposition of the collateral will not cause the creditor to suffer any prejudice or impose an undue burden. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Guarantor is "debtor" within meaning of UCC § 9-105(1)(d) and § 9-504(3), and thus is entitled to notice of disposition of collateral. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Guarantors of promissory note secured by collateral were "debtors" within meaning of UCC §§ 9-105(1)(d) and 9-504(3) and were entitled to reasonable notification prior to disposition of collateral by secured party; failure to provide such notice precluded entry of deficiency judgment in action by secured party against guarantors. Hepworth v. Orlando Bank & Trust Co., 323 So. 2d 41 (Fla. App. 1975).

12. "Goods."

United States coins having a numismatic value in excess of the value expressed on their face and pledged as collateral to secure a bank loan are to be considered as "goods" within the meaning of the UCC, and not solely as a medium of exchange. In re Midas Coin Co., 264 F. Supp. 193 (E.D. Mo. 1967), aff'd, 387 F.2d 118 (8th Cir. Mo. 1968).

Drawings, reports, catalogues, literature, bids, proposals, and cost estimates are not "goods" as defined in ¶ (f) of subsection (1) of § 9-105, but are intangibles and not subject to a security interest. United States v. Antenna Sys., 251 F. Supp. 1013 (D.N.H. 1966).

"Proprietary tooling, including jigs, fixtures, patterns, core boxes, molds, etc.," and, catalogue item type of equipment used by the debtor in the manufacture of its products are "goods" as defined in ¶ (f) of subsection (1) of § 9-105 and subject to a security interest. United States v. Antenna Sys., 251 F. Supp. 1013 (D.N.H. 1966).

13. "Instrument."

In an action by a bank against a purchaser of truck bodies to obtain monies paid by the purchaser to the Internal Revenue Service after the IRS had issued a tax levy against funds owing to the seller of truck bodies, the trial court properly granted judgment for the bank where the contract between the seller and the purchaser had been delivered, assigned and accepted by the bank to secure a loan to the seller and, thereby, gave the bank a perfected security interest in the contract, an instrument under § 75-9-105, which held priority over the tax lien of the IRS which had never been filed at the principal place of business of the taxpayer. International Harvester Co. v. Peoples Bank & Trust Co., 402 So. 2d 856 (Miss. 1981).

Since non-negotiable certificate of deposit was "instrument" under UCC § 9-105(1)(g), only way security interest in certificate could be perfected was by possession under specific provisions of UCC § 9-304(1) and, thus, where secured party perfected security interest in certificate of deposit by taking possession, no subsequent claim by bank could impair that interest, and bank was not entitled to offset against certificate its claims against original owner of certificate arising out of original owner's previous indebtedness to bank. First Nat'l Bank v. Lone Star Life Ins. Co., 529 S.W.2d 67 (Tex. 1975).

14. "Security agreements."

Agreement between debtor and supplier of gasoline dispensing equipment and fuel was true consignment agreement, rather than security agreement, since supplier retained sole control over setting retail prices, debtor received commission rather than profit, and debtor was obligated to pay for gasoline when it was sold rather than when it was delivered. In re Sullivan, 103 B.R. 792 (Bankr. N.D. Miss. 1989).

The test under which a document is determined to be a "security agreement," as defined in UCC § 9-105(1)(l), is one of intent to create a security interest in the collateral. Queen of the N., Inc. v. LeGrue, 582 P.2d 144 (Alaska 1978).

In action by finance corporation against bank involving conflicting security interests in same automobile, where (1) dealer's invoice recited sale of automobile to wife and provided that she would pay $1,400 down and finance balance with plaintiff, (2) wife and husband executed (a) promissory note evidencing loan in amount of $2,995 from defendant, of which $1,400 was used as down payment for automobile and balance represented preexisting debt owed to defendant, and (b) security agreement which designated automobile as security for such loan, (3) husband, on giving dealer $1,400 down payment for automobile, executed installment sale contract in husband's name only in favor of dealer, which dealer assigned to plaintiff, (4) defendant on August 9, 1972 filed financing statement that designated both husband and wife as debtors, (5) plaintiff on August 10, 1972 filed financing statement that designated only husband as debtor, (6) husband defaulted on payments due plaintiff, and (7) both husband and wife defaulted on note given to defendant, court held (1) installment sale contract assigned to plaintiff served as security agreement under UCC § 9-203(1)(b) and plaintiff acquired valid security interest in automobile, (2) plaintiff's security interest in automobile validly attached under UCC § 9-204(1), since husband had "right" in automobile as matter of law and could use it for collateral, even though wife was vehicle's registered owner, (3) under UCC § 9-402(1) and § 9-105(1)(d) financing statement filed by plaintiff was defective, since it only listed husband as "debtor" and did not refer to wife who actually owned automobile, (4) defendant's security interest validly attached when both husband and wife signed security agreement granting security interest in automobile to defendant, (5) defendant's financing statement complied with UCC § 9-402(1), since it was signed by both husband and wife, and thus defendant's security interest in automobile was perfected, and (6) since defendant gave "value" under UCC § 1-201(44)(b) by taking security interest in automobile to secure defendant's preexisting claim, defendant's perfected security interest in vehicle extended to entire amount of defendant's loan to husband and wife, and such perfected security interest was superior to plaintiff's unperfected security interest. GMAC v. Washington Trust Co., 120 R.I. 197, 386 A.2d 1096, 3 A.L.R.4th 496 (1978).

Lease of airplane for term of sixty months which provided that if lessee failed to pay rent when due, lessor could take possession of airplane, sell it at public or private sale, and retain net proceeds of sale as liquidated damages was not true lease governed by law of bailments, but was security agreement within meaning of UCC § 9-105(h), so as to cause lessor's repossession and sale of airplane to be governed by UCC Article 9. American Lease Plans, Inc. v. Cardin, 558 S.W.2d 325 (Mo. Ct. App. 1977).

Chattel mortgage may serve both as "security agreement" and "financing statement" under Nebraska UCC, provided it complies with requirements for said instruments, and contains necessary information, as set out in UCC. Mid-America Dairymen, Inc. v. Newman Grove Coop. Creamery Co., 191 Neb. 74, 214 N.W.2d 18 (1974).

Instrument recited that buyer of corporate stock had given seller note for unpaid balance and that, if note remained unpaid, document constituted assignment of buyer's interest in shares of other corporate stock; held, this constituted security agreement. Gamble v. Hinds, 10 Cal. App. 3d 1021 (2d Dist. 1970).

15. —Financing statement as security agreement.

Nothing in either UCC § 9-105 or 9-203 requires that financing statement be separate piece of paper from security agreement, or that any particular words be used to evidence security interest, and agreement must merely provide for security interest, so that third party might know that such interest exists in particular piece of property. Thus, instrument signed by secured party and debtor was valid security agreement, and not merely financing statement, where agreement provided for security interest by use of wording "Secured Hereby" in stamped overprint, and where document met requirements of security agreement in other respects, i.e., it described collateral and was signed by debtor. Morey Mach. Co. v. Great W. Indus. Mach. Co., 507 F.2d 987 (5th Cir. Fla. 1975).

The absence of a checkmark on a financing statement to show the debtor had authorized filing without her signature did not impair the creditor's security interest, where the statement was otherwise sufficient. Beneficial Fin. Co. v. Kurland Cadillac-Oldsmobile, Inc., 32 A.D.2d 643 (2d Dep't 1969).

16. —With other documents.

Financing statement together with stipulation for judgment is sufficient as security agreement under UCC § 9-105(h). Cheek v. Caine & Weiner Co., 335 F. Supp. 1319 (C.D. Cal. 1971).

A financing statement together with a promissory note, which note read, inter alia, "This note is secured by a certain financing statement," constituted a valid security agreement under UCC § 9-105(h), even though the financing statement filed in the office of the Secretary of State did not contain the debtor's grant of security interest. Cheek v. Caine & Weiner Co., 335 F. Supp. 1319 (C.D. Cal. 1971).

Although financing statement cannot alone serve as security agreement, it can serve as such where enclosed and signed with letter sent by creditor to corporate debtor setting forth indebtedness and repayment terms, one of which was that debtor execute financing statement. In re Carmichael Enters., Inc., 334 F. Supp. 94 (N.D. Ga. 1971), aff'd, 460 F.2d 1405 (5th Cir. Ga. 1972).

17. —Ineffective security agreements.

Secured party's security interest in debtor's inventory was not perfected where description in financing statement required by UCC § 9-402(1) described collateral as "all accounts and contracts owned by the debtor or arising from the sale of inventory," since secured party could perfect security interest only in types of collateral listed on financing statement and under UCC § 9-105(1)(f), neither the term "accounts" nor the term "contracts" included inventory. Gulf Nat'l Bank v. Franke, 563 F.2d 766 (5th Cir. 1977).

Despite parties' intention and attempt to create security interest in favor of seller of automobile, bill of sale, describing automobile and setting out terms of payment and insurance, and certificate of title, showing purchaser to be owner and seller to be holder of first lien, did not satisfy minimal Code requirements, since neither contained language actually conveying security interest. Shelton v. Erwin, 472 F.2d 1118 (8th Cir. Mo. 1973).

Where seller of cattle received notes, signed by debtor, with notations that they were secured by financing statements filed, describing collateral and signed by both debtor and secured party, secured party did not have perfected security interest in collateral described in financing statement since no security agreement was signed granting security interest in collateral. Barth Bros. v. Billings, 68 Wis. 2d 80, 227 N.W.2d 673 (1975).

18. —Promissory note as security agreement.

Under UCC § 9-105(1)(h), which defines security agreement as one which "creates or provides for" a security interest, promissory note which included line, "This note is secured by a Security Interest in subject personal property as per invoices," qualified as security agreement; incorporation of invoices into promissory note by reference was sufficient description of collateral under UCC §§ 9-203(1)(b) and 9-110, when coupled with existence of financing statement containing more specific description. In re Amex-Protein Dev. Corp., 504 F.2d 1056 (9th Cir. Cal. 1974).

Promissory notes, which contained no language expressly or by implication granting to seller lien or interest in automobile as security for repayment of loan, but merely contained reference to automobile by make, year and serial number, did not constitute security agreement and did not create security interest in seller; and deficiency could not be supplied by notation contained in certificate of ownership designating seller as "secured party." First County Nat'l Bank & Trust Co. v. Canna, 124 N.J. Super. 154, 305 A.2d 442 (App. Div. 1973).

19. "Secured party."

Where part of collateral had been transferred to third party prior to debtor's bankruptcy, creditor was secured only as to collateral in bankrupt's possession; while creditor lost secured status as to transferred collateral, bankrupt's guarantors still had obligation to pay unsecured portion of debt. R.I.D.C. Indus. Dev. Fund v. Snyder, 539 F.2d 487 (5th Cir. Fla. 1976), cert. denied, 429 U.S. 1095, 97 S. Ct. 1112, 51 L. Ed. 2d 542 (1977).

Since contract right is personal property which can serve as collateral under UCC § 9-105(1)(c), owner of stock in corporation formed to sell eggs, after selling such stock under contract providing that buyers would make payments therefor on instalment plan, could assign right to sale proceeds to third party as security for loan made by third party to owner, regardless of whether owner himself had security interest with buyers of such stock to enforce their payments. Ralston Purina Co. v. Detwiler, 173 Ind. App. 513, 364 N.E.2d 180 (1977).

Under UCC § 9-105(1)(i), a secured party under Article 9 is a "purchaser" within meaning of UCC § 1-201(33); thus, where credit corporation had prior valid security interest in automobile dealer's inventory, where automobile wholesaler sold and delivered used cars and trucks to dealer with unencumbered certificates of title, but where dealer's checks in payment for vehicles were dishonored, under UCC § 2-403, dealer could transfer good title to "good faith purchaser for value," despite fact dealer tendered, for purchase of vehicles, checks which were subsequently dishonored, and, hence, credit corporations' security interest in automobiles delivered to dealer was superior to wholesaler's interest. Swets Motor Sales, Inc. v. Pruisner, 236 N.W.2d 299 (Iowa 1975).

Where securities were pledged to broker who in turn pledged securities to bank for a loan, bank was a vendor of money in whose favor there existed a security interest and, therefore, was a "secured party" under the duty of exercising reasonable care for the preservation and protection of the collateral held by it. Grace v. Sterling, Grace & Co., 30 A.D.2d 61 (1st Dep't 1968).

20. Other terms.

Under UCC § 9-105(1)(f) and Official Comment 3, "inventory" is tangible collateral and "accounts" are intangible collateral. Gulf Nat'l Bank v. Franke, 563 F.2d 766 (5th Cir. 1977).

Where creditor of New York lessor of heavy equipment, installed in New Jersey by New Jersey lessee, perfected security interest in equipment leases by New York filing but did not perfect its interest in reversion in New Jersey where equipment was located, lessor's trustee in bankruptcy had priority with respect to equipment itself over creditor's unperfected security interest. In re Leasing Consultants, Inc., 351 F. Supp. 1390 (E.D.N.Y. 1972), remanded, 486 F.2d 367 (2d Cir. N.Y. 1973).

Where the creditor is not aware that the collateral is owned by a third person, an extension made to the debtor does not release the collateral as the third person is only protected as a "surety" where his interest in the collateral is known to the creditor. Mauch v. First Nat'l Bank, (1967).

The Uniform Commercial Code makes an express distinction between a "secured creditor" (see UCC § 9-105(1)(m)) and a "lienholder." Under UCC § 9-301(3), a "lien creditor" is a creditor who has acquired a lien on the property involved by attachment, levy, or the like. Kramer v. McDonald's Sys., 61 Ill. App. 3d 947, 378 N.E.2d 522 (1st Dist. 1978), aff'd, 77 Ill. 2d 323, 33 Ill. Dec. 115, 396 N.E.2d 504 (1979).

B. Decisions Under Former Statutes.

21. In general.

Section 5080-19 of the uniform trust receipts act, which defines a buyer in the ordinary course of trade as one who buys for new value, acts in good faith and who has no actual knowledge of the title held by another, does not expressly or by necessary inference, exclude a sale of a vehicle by one dealer to another. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

Under an automobile floor planning agreement, a sale by trustee of an automobile to another automobile dealer was a retail sale permitted by the floor planning arrangement. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

Where a trust agreement permitted the trustee to sell an automobile in the ordinary course of retail sale, the word retail is to be counterdistinguished from bulk sales, which, as to requirement of notice to creditors of the seller, was provided for under the bulk sales law. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

III. Under Former § 75-9-106.

22. In general; "Account."

Where loan agreement defined "account" as a right to payment for goods sold or leased or for services rendered and including a right to payment which had been earned under a contract right, a financing statement which described the collateral as "accounts receivable" was sufficient to perfect a security interest in the proceeds of a government contract. In re Varney Wood Prods., Inc., 458 F.2d 435 (4th Cir. Va. 1972).

23. —Other terms distinguished.

Contract rights arising out of contracts for installation of carpeting came within meaning of term "account" as defined in UCC § 9-106, in that contracts created rights for services rendered, and these contract rights came within definition of "collateral" contained in UCC § 105(c), in that they constituted accounts covered by security agreement between debtor and secured party. Pine Bldrs., Inc. v. United States, 413 F. Supp. 77 (E.D. Va. 1976).

Assignment of portion of expected recovery of pending lawsuit given as security for loan and accounting services was not assignment of "account" or "contract right," but was more aptly categorized as assignment of "general intangible," which would not be perfected until filing of financing statement. Friedman, Lobe & Block v. C.L.W. Corp., 9 Wash. App. 319, 512 P.2d 769 (1973).

UCC § 9-106 differentiates an "account" from a "contract right" in that an "account" is a right to payment that has been earned by performance while a "contract right" is a right to payment to be earned in the future; once the right to payment has been earned, the contract right is extinguished and an account arises; while the distinction may have little significance (1971 Editorial Board Recommendation for UCC was that term "contract right" be eliminated as unnecessary), they are distinct categories of property each of which may serve as collateral in secured transaction under UCC § 9-102(1)(a). E. Turgeon Constr. Co. v. Elhatton Plumbing & Heating Co., 110 R.I. 303, 292 A.2d 230 (1972).

State highway department's obligation to a partner for his share of the work done by the partnership on a completed highway construction project was not a "contract right" but was an "account." Spurlin v. Sloan, 368 S.W.2d 314 (Ky. 1963).

24. "Contract right."

Security deposit under lease was contract right within meaning of Code rather than simple common-law pledge. United States v. Samel Ref. Corp., 461 F.2d 941 (3d Cir. Pa. 1972).

Contract rights arising out of contracts for installation of carpeting came within meaning of term "account" as defined in UCC § 9-106, in that contracts created rights for services rendered, and these contract rights came within definition of "collateral" contained in UCC § 105(c), in that they constituted accounts covered by security agreement between debtor and secured party. Pine Bldrs., Inc. v. United States, 413 F. Supp. 77 (E.D. Va. 1976).

"Contract rights" are personal property in Texas. Centex Constr. Co. v. Kennedy, 332 F. Supp. 1213 (S.D. Tex. 1971).

Tenant's right to payment of unused portion of security deposit conditioned upon subsequent performance of obligations under lease was "contract right" subject to security interest of creditor covering all contract rights of tenant. United States v. Samel Ref. Corp., 313 F. Supp. 684 (E.D. Pa. 1970), aff'd, 461 F.2d 941 (3d Cir. Pa. 1972).

"Joint payment agreement" is security agreement which creates security interest in contract right. Welbourne Dev. Co. v. Affiliated Clearance Corp., 28 Colo. App. 313, 472 P.2d 684 (1970).

25. —Assignment of contract right.

Contractor's assignment of right to payment to its surety pursuant to indemnity agreement was account or contract right within meaning of UCC § 9-106 and was, as such, security interest subject to provisions of Article 9 of UCC; however, UCC §§ 9-301 and 9-302 provide that, with respect to such security interests in accounts and contract rights, any lien creditor, including judgment lien creditor, will have priority over secured interest unless financing statement has been filed; since no such financing statement was filed by surety with respect to assignment in question, its security interest remained subordinate to tax liens of United States. American Fid. Fire Ins. Co. v. United States, 385 F. Supp. 1075 (N.D. Cal. 1974).

Letter from contractor to owner of building to be erected under contract notifying owner that contract rights of contractor had been assigned to bank as security for loan on which owner stated in writing that he recognized above-described contract assignment and agreed to make payment jointly to owner and bank as requested in said letter was sufficient to constitute valid assignment and bank acquired security interest in contract rights under UCC § 9-106. Park Ave. Bank v. Bassford, 232 Ga. 216, 205 S.E.2d 861 (1974).

Uniform Commercial Code § 9-318 and § 9-106 are apparently limited to instances of assignments of executory contracts. Gramatan Co. v. D'Amico, 50 Misc. 2d 233 (1966).

A letter written by a subcontractor to his general contractor advising the latter of the assignment of his account for work performed to a bank, the written acceptance of the letter by the addressee, and the fact that the bank loaned money to the subcontractor taking the letter assignment as collateral, created a valid security interest which did not have to be perfected by the filing of a financing statement. Citizens & S. Nat'l Bank v. Capital Constr. Co., 112 Ga. App. 189, 144 S.E.2d 465 (1965).

When a contractor, in applying to a surety for a performance bond, conditionally assigned to the surety money to become due under the contract as security against loss to the surety in the event of the contractor's default, the right thereby acquired by the surety-a right to as yet unearned payment under a contract-was a security interest which had to be perfected in the manner specified by the Code. Hartford Accident & Indem. Co. v. State Pub. Sch. Bldg. Auth., 26 Pa. D. & C.2d 717 (1961).

The assignment in a building subcontractor's performance bond, to his surety, of all sums due and to become due to the subcontractor under his contract with the primary contractor, in the event of any abandonment, forfeiture, or breach of the subcontract by the subcontractor, was a "contract right" under § 9-301, and where not perfected under §§ 9-302 and 9-403 by appropriate recording, was invalid against a lien creditor, including a trustee in bankruptcy, from the date of the filing of the petition; hence, the surety was relegated to the status of a general creditor, with no lien on funds owing from the contractor to the bankrupt and paid into court. United States ex rel. Greer v. G.P. Fleetwood & Co., 165 F. Supp. 723 (W.D. Pa. 1958).

26. —Other terms distinguished.

Contract rights arising out of contracts for installation of carpeting came within meaning of term "account" as defined in UCC § 9-106, in that contracts created rights for services rendered, and these contract rights came within definition of "collateral" contained in UCC § 105(c), in that they constituted accounts covered by security agreement between debtor and secured party. Pine Bldrs., Inc. v. United States, 413 F. Supp. 77 (E.D. Va. 1976).

Assignment of portion of expected recovery of pending lawsuit given as security for loan and accounting services was not assignment of "account" or "contract right," but was more aptly categorized as assignment of "general intangible," which would not be perfected until filing of financing statement. Friedman, Lobe & Block v. C.L.W. Corp., 9 Wash. App. 319, 512 P.2d 769 (1973).

Where loan agreement defined "account" as a right to payment for goods sold or leased or for services rendered and including a right to payment which had been earned under a contract right, a financing statement which described the collateral as "accounts receivable" was sufficient to perfect a security interest in the proceeds of a government contract. In re Varney Wood Prods., Inc., 458 F.2d 435 (4th Cir. Va. 1972).

UCC § 9-106 differentiates an "account" from a "contract right" in that an "account" is a right to payment that has been earned by performance while a "contract right" is a right to payment to be earned in the future; once the right to payment has been earned, the contract right is extinguished and an account arises; while the distinction may have little significance (1971 Editorial Board Recommendation for UCC was that term "contract right" be eliminated as unnecessary), they are distinct categories of property each of which may serve as collateral in secured transaction under UCC § 9-102(1)(a). E. Turgeon Constr. Co. v. Elhatton Plumbing & Heating Co., 110 R.I. 303, 292 A.2d 230 (1972).

State highway department's obligation to a partner for his share of the work done by the partnership on a completed highway construction project was not a "contract right" but was an "account." Spurlin v. Sloan, 368 S.W.2d 314 (Ky. 1963).

27. "General intangibles."

Trade secrets possess sufficient attributes of property to be subject to security interests as general intangibles. American Tobacco Co. v. Evans, 508 So. 2d 1057, 75 A.L.R.4th 997, 2 U.S.P.Q.2d 1866 (Miss. 1987).

A liquor license is a "general intangible" within the meaning of UCC § 9-106 and can be the subject of a security interest. Queen of the N., Inc. v. LeGrue, 582 P.2d 144 (Alaska 1978).

Lien obtained through attachment execution on partnership interest, after defendant had allegedly assigned interest to his attorney as collateral for fees and costs, took priority over rights of attorney-assignee; partnership interest came within definition of "general intangible" under UCC § 9-106, security interest therein was clearly within scope of security interests governed by article 9 of code under UCC § 9-102, and, inasmuch as no financing statement was filed under UCC § 9-302, such security interest was unperfected and plaintiff's lien, obtained through attachment execution, took priority under UCC § 9-301 over rights of defendant's attorney as holder of unperfected security interest of which plaintiff had no knowledge. Med-Mar, Inc. v. Dilworth, 96 Montg. County L. Rep. 91 (Pa. 1972).

Drawings, reports, catalogues, literature, bids, proposals, and cost estimates are not "goods" as defined in ¶ (f) of subsection (1) of § 9-105, but are intangibles and not subject to a security interest. United States v. Antenna Sys., 251 F. Supp. 1013 (D.N.H. 1966).

28. —Other terms distinguished.

Assignment of portion of expected recovery of pending lawsuit given as security for loan and accounting services was not assignment of "account" or "contract right," but was more aptly categorized as assignment of "general intangible," which would not be perfected until filing of financing statement. Friedman, Lobe & Block v. C.L.W. Corp., 9 Wash. App. 319, 512 P.2d 769 (1973).

IV. Under Former § 75-9-109.

29. In general.

Under UCC § 9-109(1)-(4), goods are classified as consumer goods, equipment, farm products, or inventory. These classifications, as declared by Official Comment 2, are mutually exclusive. Thus, if goods are farm products, they are neither equipment nor inventory. First State Bank v. Producers Livestock Mktg. Ass'n Non-Stock Coop., 200 Neb. 12, 261 N.W.2d 854 (1978).

Classifications contained in UCC § 9-109 are intended primarily for the purpose of determining which set of filing requirements is proper. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Because UCC § 9-109 bases proper place of filing on "the principal use to which the property is put", creating uncertainty, in bankruptcy situations involving the UCC, the only answer would seem to be that a creditor in doubt about the proper classification of collateral should file in all possible counties where filing might be required. In re McClain, 447 F.2d 241 (10th Cir. Okla. 1971), cert. denied, 405 U.S. 918, 92 S. Ct. 943, 30 L. Ed. 2d 788 (1972).

Where both the conditional sale and the repossession of an automobile pre-date the adoption of the UCC, the New Jersey Uniform Conditional Sales Act controlled the issues between the parties. Elizabethport Banking Co. v. Tuzeneau, 87 N.J. Super. 17, 207 A.2d 707 (App. Div. 1965).

30. "Consumer goods."

Household goods and furnishings purchased by three Chapter 13 debtors from furniture store qualified as "consumer goods," under Mississippi law. In re Shaw, 209 B.R. 393 (Bankr. N.D. Miss. 1996).

Under UCc § 9-109(1)-(4), goods are classified as consumer goods, equipment, farm products, or inventory. These classifications, as declared by Official Comment 2, are mutually exclusive. Thus, if goods are farm products, they are neither equipment nor inventory. First State Bank v. Producers Livestock Mktg. Ass'n Non-Stock Coop., 200 Neb. 12, 261 N.W.2d 854 (1978).

31. —Other terms distinguished.

"Proprietary tooling, including jigs, fixtures, patterns, core boxes, molds, etc.," and, catalogue item type of equipment used by the debtor in the manufacture of its products are "goods" as defined in ¶ (f) of subsection (1) of § 9-105 and subject to a security interest. United States v. Antenna Sys., 251 F. Supp. 1013 (D.N.H. 1966).

A guitar and amplifier primarily used by the purchaser to perform in night clubs are "equipment" and not "consumer goods," and consequently the seller's security interest must be perfected to be enforceable against a person to whom the instruments were subsequently pawned. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

An automobile held in inventory by recognized dealer constitutes consumer goods and a buyer in the ordinary course of business purchases the automobile free of any security interest. Murphy v. Plymouth Nat'l Bank, 22 Mass. App. Dec. 36 (1961).

32. —Items for personal use.

Where defendant buyer purchased airplane secured by contemporaneously executed security agreement from plaintiff's assignor with intent that it be used for personal rather than commercial purposes, and aircraft was, in fact, used solely for personal purposes for three months after purchase, airplane constituted "consumer goods" within meaning of Washington version of UCC § 9-501(1), which makes defaulting debtor not liable for any deficiency after secured party has disposed of collateral in cases involving purchase money security interests in consumer goods taken or retained by sellers of such collateral, notwithstanding defendant did make plane available for rental about nine months after executing security agreement and notwithstanding airplane was expensive hobby item. Commercial Credit Equip. Corp. v. Carter, 83 Wash. 2d 136, 516 P.2d 767, 77 A.L.R.3d 1218 (1973).

Since television set and tape player were consumer goods, filing was not necessary to perfect purchase money security interest of conditional seller who thus had priority over security interest of pawnbroker who subsequently took possession of goods as security for loan. Kimbrell's Furn. Co. v. Friedman, 261 S.C. 172, 198 S.E.2d 803 (1973).

A household laundry dryer is within the definition of "consumer goods." United Gas Imp. Co. v. McFalls, 18 Pa. D. & C.2d 713 (1959).

33. —Boats.

Boat purchased by debtor was "consumer goods" as matter of law under UCC § 9-109(1), so as to render proper secured party's filing of financing statement in county of debtor's residence, where evidence showed that boat was bought and used primarily for debtor's personal and family use. McGehee v. Exchange Bank & Trust Co., 561 S.W.2d 926 (Tex. Civ. App. 1978), ref. n.r.e (May 10, 1978).

That a boat was consumer goods may be inferred from the uncontradicted testimony of the purchasers as to their occupation. Atlas Credit Corp. v. Dolbow, 193 Pa. Super. 649, 165 A.2d 704 (1960).

34. —Motor vehicles.

A mobile home is a motor vehicle within the meaning of UCC § 9-302 which requires that a financing statement be filed to perfect a security interest therein. Recchio v. Manufacturers & Traders Trust Co., 35 A.D.2d 769 (4th Dep't 1970).

35. —Motor vehicles; personal use.

Consumer goods, which under the instant section are those "used or bought for use primarily for personal, family or household purposes" were assumed to include a two-door Pontiac automobile. National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

An automobile purchased for personal, family, or household purposes is classified as consumer goods. National Shawmut Bank v. Jones, 108 N.H. 386, 236 A.2d 484 (1967).

An automobile which conditional buyer purchased to use in going to and from his place of employment falls within the category of "consumer goods." Mallicoat v. Volunteer Fin. & Loan Corp., 57 Tenn. App. 106, 415 S.W.2d 347 (1966).

36. —Motor vehicles; dealer use.

Automobiles delivered by an automobile manufacturer to its authorized dealer, with a reservation of title until actual payment therefor, were not "consumer goods" which would relieve the manufacturer, as the holder of a security interest, from the requirement of perfecting its security interest in order to take priority over a lien creditor. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 12 Pa. D. & C.2d 351 (1957).

37. —Miscellaneous items.

Sandblasting hoods and respirators used by employees in course of their employment are not consumer goods within meaning of UCC § 9-109(1) and UCC § 2-103(3). Simmons v. American Mut. Liab. Ins. Co., 433 F. Supp. 747 (S.D. Ala. 1976), aff'd sub nom. Love v. American Mut. Liab. Ins. Co., 560 F.2d 1021 (5th Cir. Ala. 1977), aff'd, 560 F.2d 1022 (5th Cir. Ala. 1977).

Plaintiff employee's cause of action for injuries, based on breach of implied warranties of merchantability and fitness for particular purpose of crane purchased by plaintiff's employer, against manufacturer of crane was barred under UCC § 2-725(1) and (2) where (1) action was commenced more than four years after delivery of crane to employer, (2) "future-performance-of-goods" exception to normal accrual-of-cause-of-action rule contained in UCC § 2-725(2) did not apply to case, since Uniform Commercial Code did not intend that "implied" warranty could be "explicitly" extended to future performance, but contemplated that such exception should apply only to "express" warranties, and (3) "consumer-goods" exception to normal-accrual-of-cause-of-action rule in UCC § 2-725(2) also did not apply to case, since crane that injured plaintiff was "equipment" and not "consumer goods" under UCC § 2-103(3) and § 9-109(1) and (2). Wright v. Cutler-Hammer, Inc., 358 So. 2d 444 (Ala. 1978).

A cash register does not come within the definition of consumer goods. In re Tops Cleaners, Inc., 20 Pa. D. & C.2d 264 (1960).

38. "Equipment."

"Equipment" is defined in the negative in UCC § 9-109(2); that is, collateral or goods become "equipment" when they do not fall into any of the other categories listed in UCC § 9-109. Grimes v. Massey Ferguson, Inc., 355 So. 2d 338 (Ala. 1978).

39. —Construction equipment.

Plaintiff employee's cause of action for injuries, based on breach of implied warranties of merchantability and fitness for particular purpose of crane purchased by plaintiff's employer, against manufacturer of crane was barred under UCC § 2-725(1) and (2) where (1) action was commenced more than four years after delivery of crane to employer, "future-performance-of-goods" exception to normal accrual-of-cause-of-action rule contained in UCC § 2-725(2) did not apply to case, since Uniform Commercial Code did not intend that "implied" warranty could be "explicitly" extended to future performance, but contemplated that such exception should apply only to "express" warranties, and (3) "consumer-goods" exception to normal-accrual-of-cause-of-action rule in UCC § 2-725(2) also did not apply to case, since crane that injured plaintiff was "equipment" and not "consumer goods" under UCC § 2-103(3) and § 9-109(1) and (2). Wright v. Cutler-Hammer, Inc., 358 So. 2d 444 (Ala. 1978).

Where creditor of New York lessor of heavy equipment, installed in New Jersey by New Jersey lessee, perfected security interest in equipment leases by New York filing but did not perfect its interest in reversion in New Jersey where equipment was located, lessor's trustee in bankruptcy had priority with respect to equipment itself over creditor's unperfected security interest. In re Leasing Consultants, Inc., 351 F. Supp. 1390 (E.D.N.Y. 1972), remanded, 486 F.2d 367 (2d Cir. N.Y. 1973).

A bank which had filed its financing statement with the New Jersey Secretary of State had perfected its security interest in five items of self-propelled earth moving equipment although it had not filed a financing statement with the Director of Division of Motor Vehicles, an act required by state statute as a condition precedent to the perfection of a security interest in "motor vehicles" (a term defined in the statute to include self-propelled earth moving equipment), the court holding that despite the statutory definition, the term "motor vehicle" was not intended to embrace machinery which normally operates at construction sites even though literally it perhaps can be used to transport persons on a highway. In re Ferro Contracting Co., 380 F.2d 116 (3d Cir. N.J. 1967), cert. denied, 389 U.S. 974, 88 S. Ct. 475, 19 L. Ed. 2d 466 (1967).

40. —Other terms distinguished.

Guitar and amplifier primarily used to perform in night clubs were "equipment" within Code § 9-109(2), and not within Code § 9-302(1)(d) consumer goods exception to Code filing requirements. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

By excluding "farm products" from the classifications of "equipment" and "inventory," and by expressly providing that a buyer in the ordinary course of business of farm products from a person engaged in farming operations does not take free of a security interest created by the seller, the draftsmen of the Code apparently intended to freeze the agricultural mortgagee into the special status he had achieved under pre-code case law. Clovis Nat'l Bank v. Thomas, 77 N.M. 554, 425 P.2d 726 (1967).

"Proprietary tooling, including jigs, fixtures, patterns, core boxes, molds, etc.," and, catalogue item type of equipment used by the debtor in the manufacture of its products are "goods" as defined in ¶ (f) of subsection (1) of § 9-105 and subject to a security interest. United States v. Antenna Sys., 251 F. Supp. 1013 (D.N.H. 1966).

41. —Farm machinery.

Where debtor was engaged in business of buying cattle, feeding and fattening them, and selling them for slaughter, debtor was engaged in "farming operations" and cattle were "farm products," so that sale to buyer in ordinary course of business would not cut off secured party's security interest in debtor's livestock. Baker Prod. Credit Ass'n v. Long Creek Meat Co., 266 Or. 643, 513 P.2d 1129 (1973).

One can be a farmer of trees if they are grown from seed and cared for in a nursery setting, but the commercial logging of trees is not farming but an industrial operation, so that filing of financing statement covering logging equipment cannot be effectively filed with county clerk and recorder. Mountain Credit v. Michiana Lumber & Supply, Inc., 31 Colo. App. 112, 498 P.2d 967 (1972).

Filing at debtor's chief place of business was required to perfect security interest in equipment, and where conditional sale contract covering farm tractors was never filed anywhere, judgment creditor who executed and levied against tractors had claim superior to that of assignee of conditional sale contract. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Tractors come within UCC § 9-109(2) definition of "equipment", the mobile nature of which requires that perfection of security interest at one location will protect the secured party, regardless of the debtor's future actions. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

42. —Miscellaneous items.

Description of collateral contained in security agreement must be reasonably specific; and term "equipment" in omnibus clause of security agreement did not include two automobiles owned by debtor corporation. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Furniture, furnishings and carpeting sold to a Golden Age Home, a nonprofit corporation, constituted equipment. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

43. "Farm products."

Ginned cotton is a "farm product" under UCC § 9-109(3). Oxford Prod. Credit Ass'n v. Dye, 368 So. 2d 241 (Miss. 1979).

Where bank's security agreement was clearly intended to create security interest in all of debtor's livestock that was used or bought primarily for farming operations, as distinguished from business operations, bank's security interest did not apply to cattle that debtor bought for immediate resale and sold, shortly after their purchase, at public auction conducted by defendant auctioneer, since under UCC § 9-109(4), such cattle were inventory as matter of law because they were used only in connection with debtor's activities as cattle trader or speculator. First State Bank v. Producers Livestock Mktg. Ass'n Non-Stock Coop., 200 Neb. 12, 261 N.W.2d 854 (1978).

Where debtor was engaged in business of buying cattle, feeding and fattening them, and selling them for slaughter, debtor was engaged in "farming operations" and cattle were "farm products," so that sale to buyer in ordinary course of business would not cut off secured party's security interest in debtor's livestock. Baker Prod. Credit Ass'n v. Long Creek Meat Co., 266 Or. 643, 513 P.2d 1129 (1973).

One can be a farmer of trees if they are grown from seed and cared for in a nursery setting, but the commercial logging of trees is not farming but an industrial operation, so that filing of financing statement covering logging equipment cannot be effectively filed with county clerk and recorder. Mountain Credit v. Michiana Lumber & Supply, Inc., 31 Colo. App. 112, 498 P.2d 967 (1972).

Tractors come within UCC § 9-109(2) definition of "equipment", the mobile nature of which requires that perfection of security interest at one location will protect the secured party, regardless of the debtor's future actions. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Filing at debtor's chief place of business was required to perfect security interest in equipment, and where conditional sale contract covering farm tractors was never filed anywhere, judgment creditor who executed and levied against tractors had claim superior to that of assignee of conditional sale contract. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Cattle purchased as part of dairy herd are not "inventory" as defined in UCC § 9-109. United States v. Mid-States Sales Co., 336 F. Supp. 1099 (D. Neb. 1971).

44. "Inventory."

The Civil Court of the City of New York, which has no general equity jurisdiction (CCA, § 202), lacks subject matter jurisdiction over a creditor's action to hold defendant, as transferee, liable for the debt of a third party because of defendant's failure to comply with the Bulk Sales Act, which act is designed to prevent commercial fraud by declaring "ineffective" the sale or transfer of a debtor's bulk inventory if there is a failure to notify the creditors of such sale or transfer (Uniform Commercial Code, § 6-105), since, in order to obtain relief under the act, defrauded or unnotified general creditors must sue in equity to set aside the transfer or seek such other equitable remedies as the circumstances indicate and an action at law for a money judgment against the transferee for violations of the act cannot be maintained except in the exceptional case where the facts indicate tortious conduct or breach of contract; even if there were jurisdiction, the action would still be dismissed since the debtor was in the business of selling jewelry and diamonds and the sale to defendant of its office furniture and equipment, customers' lists, jewelry catalogues and a telephone listing was, therefore, not a bulk transfer of its inventory (Uniform Commercial Code, § 6-102), inventory being defined as goods held for sale. H.L.C. Imports Corp. v. M & L Siegel, Inc., 98 Misc. 2d 179 (1979), but see, Talbot Typographics, Inc. v. Tenba, Inc. 147 Misc. 2d 922, 560 N.Y.S.2d 82 (Civ. Ct. 1990).

Goods which are held for sale or lease are classified as inventory by UCC § 9-109(4). The principal test to determine if goods are inventory is whether they are held for immediate or ultimate sale. In borderline cases, the principal use to which the property is put is determinative. First State Bank v. Producers Livestock Mktg. Ass'n Non-Stock Coop., 200 Neb. 12, 261 N.W.2d 854 (1978).

By excluding "farm products" from the classifications of "equipment" and "inventory," and by expressly providing that a buyer in the ordinary course of business of farm products from a person engaged in farming operations does not take free of a security interest created by the seller, the draftsmen of the Code apparently intended to freeze the agricultural mortgagee into the special status he had achieved under pre-code case law. Clovis Nat'l Bank v. Thomas, 77 N.M. 554, 425 P.2d 726 (1967).

An automobile held in inventory by recognized dealer constitutes consumer goods and a buyer in the ordinary course of business purchases the automobile free of any security interest. Murphy v. Plymouth Nat'l Bank, 22 Mass. App. Dec. 36 (1961).

45. —Other terms distinguished.

Under Code, classification of goods is mutually exclusive, so that, as between same parties and at same point in time, product cannot be classified as both "inventory" and "consumer goods"; manner in which product is classified as determined at time of agreement between parties giving rise to security interest and, as to them, categorization remains unaffected by later transfer of product in question; held, where auto was held for purpose of resale at time of creation of security interest therein, car was "inventory" as between parties to security agreement, regardless of subsequent disposition of auto.

Franklin Inv. Co. v. Homburg, 252 A.2d 95 (D.C. 1969).

46. —Motor vehicles.

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

The perfected security interest of a retail finance corporation who purchased a credit agreement signed by a "buyer in the ordinary course of business" from an automobile dealer had priority over the perfected interests of a bank which furnished floor plan financing to finance the dealer's acquisition and holding of motor vehicles for use and resale in the course of the dealer's business. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

Automobiles financed under a floor plan arrangement and held by an automobile dealer are inventory held for sale to the public. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

47. —Farm inventory.

Cattle purchased as part of dairy herd are not "inventory" as defined in UCC § 9-109. United States v. Mid-States Sales Co., 336 F. Supp. 1099 (D. Neb. 1971).

Where bank's security agreement was clearly intended to create security interest in all of debtor's livestock that was used or bought primarily for farming operations, as distinguished from business operations, bank's security interest did not apply to cattle that debtor bought for immediate resale and sold, shortly after their purchase, at public auction conducted by defendant auctioneer, since under UCC § 9-109(4), such cattle were inventory as matter of law because they were used only in connection with debtor's activities as cattle trader or speculator. First State Bank v. Producers Livestock Mktg. Ass'n Non-Stock Coop., 200 Neb. 12, 261 N.W.2d 854 (1978).

48. —Miscellaneous.

Glass, plywood, locks, hinges, pulls, felt, and other materials supplied by one company to another company to be manufactured into finished gun cabinets, which were then to be sold at reduced price to company furnishing materials, were "inventory" of manufacturer under UCC § 9-109(4) and thus subject to attachment, under UCC § 9-204(1), of perfected security interests of two banks in manufacturer's present and after-acquired inventory under security agreement executed by manufacturer in favor of banks to secure loans made by banks. Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

In junior mortgagee's action for damages for defendant's alleged impairment of plaintiff's security, where defendant under security agreement with dealer in modular homes had security interest in all of dealer's present or future inventory and also first mortgage on 2.39 acres of land acquired by dealer for use as sales lot, on which dealer installed two modular homes; where plaintiff held second mortgage on dealer's 2.39 acres as security for loan on which dealer defaulted; and where defendant after dealer's default quickly removed modular homes from dealer's lot pursuant to written authorization from officer of dealer's company, (1) homes placed by dealer on sales lot, although installed on concrete foundations and connected to utilities, were inventory and not real property or fixtures under UCC § 9-109(4), since they were goods intended for immediate or ultimate sale; (2) defendant held perfected purchase-money security interest in dealer's inventory under UCC § 9-401(1)(c) and UCC § 9-402(1), which under UCC § 9-312(3) took priority over plaintiff's junior-mortgage interest; and (3) defendant on dealer's default had right to take possession of homes on dealer's lot, since they were inventory collateral. Rakosi v. GECC, 59 A.D.2d 553 (2d Dep't 1977).

Where security agreement executed by building contractor granted security interest to bank in all uninstalled materials on construction site and also all stoves, refrigerators, dishwashers, water heaters, heating and air-conditioning units, incinerators, carpeting, and drapes then or thereafter owned or held by contractor, or then or thereafter located on or used in connection with contractor's operation of the premises, goods secured were "inventory" within meaning of UCC § 9-109(4). Sears, Roebuck & Co. v. Detroit Fed. Sav. & Loan Ass'n, 79 Mich. App. 378, 262 N.W.2d 831 (1977).

RESEARCH REFERENCES

ALR. What constitutes "Accounts receivable" under contract selling, assigning, pledging, or reserving such items. 41 A.L.R.2d 1395.

Sufficiency of description in chattel mortgage as covering all property of a particular kind. 2 A.L.R.3d 839.

Secured transactions: what constitutes "consumer goods" under UCC § 9-109(1). 77 A.L.R.3d 1225.

Secured transactions: what constitutes "inventory" under UCC § 9-109(4). 77 A.L.R.3d 1266.

Security interests in liquor licenses. 56 A.L.R.4th 1131.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 8 et seq., 20.

37 Am. Jur. 2d, Fraudulent Conveyances and Transfers § 228.

68A Am. Jur. 2d, Secured Transactions §§ 30, 123, 172 et seq.

73 Am. Jur. 2d, Statutes § 214 et seq.

2 Am. Jur. Legal Forms 2d, Animals § 20:42 (security interest in animals under terms of Uniform Commercial Code).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1663 through 253:1666.

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1667 through 253:1671 (classification of goods).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:123, 9:125 (definitions, types of collateral).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:141-9:144 (definitions; classification of goods).

Instructions to jury; growing crops and timber to be cut included in "goods," 6 Am. Jur. Pl & Pr Forms (Rev), Sales, Forms 2:4, 2:5.

Definitions, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:91-9:144.

CJS. 82 C.J.S., Statutes § 262.

Law Reviews. 1978 Mississippi Supreme Court Review: Commercial Law. 50 Miss. L. J. 41, March 1979.

The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

1987 Mississippi Supreme Court Review, Corporate, contract and commercial law. 57 Miss. L. J. 467, August, 1987.

§ 75-9-103. Purchase-money security interest; application of payments; burden of establishing.

(a) In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one (1) obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

SOURCES: Former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56] is now found in comparable provisions enacted at §§ 75-9-301, 75-9-303, 75-9-304, 75-9-305, 75-9-306, 75-9-307, 75-9-316, and 75-9-337 by Laws, 2001, ch. 495, § 1. Present § 75-9-103 was derived from former 1972 Code § 75-9-107 [Codes, 1942, § 41A:9-107; Laws, 1966, ch. 316, § 9-107] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Protection of buyer of goods from security interest created by seller, see § 75-9-320.

Priority of purchase, money security interests, see § 75-9-324.

JUDICIAL DECISIONS

I. Under Current Law.

1.-4. [Reserved for furture use.]
5. Illustrative cases.

II. Under Former § 75-9-107.

A. Decision Under Uniform Commercial Code.

6. In general.
7. After-acquired property.
8. Lease.
9. Lender.
10. Particular applications.

B. Decisions Under Former Statutes.

11. In general.
12. Attachment of lien.
13. —Property purchased for resale.
14. Enforcement of lien.
15. Waiver of lien.

I. Under Current Law.

1.-4. [Reserved for furture use.]

5. Illustrative cases.

Bankruptcy court adopted the dual-status rule for determining how to treat a $ 5,500 credit Chapter 13 debtors received on a vehicle they surrendered when they purchased another vehicle two years and two months before they declared bankruptcy, and found that a creditor's claim in the amount of $ 26,308.22 was secured in the amount of $ 21,335.97, and unsecured in the amount of $ 4,972.25, under 11 U.S.C.S. § 1325(a) (hanging paragraph referencing paragraph 5). The court made that determination by finding that the creditor obtained a purchase-money security interest, pursuant to Miss. Code Ann. § 75-9-103, that equaled 81.1% of the total amount financed, and multiplying the amount of the creditor's claim by .811. In re Busby, 393 B.R. 443 (Bankr. S.D. Miss. 2008).

II. Under Former § 75-9-107.

A. Decision Under Uniform Commercial Code.

6. In general.

Under Mississippi law, successive installment contracts between three Chapter 13 debtors and furniture company, which incorporated not only purchase price of new merchandise, but also balance remaining on previous contracts, provided furniture company with purchase money security interest only in property being purchased pursuant to most recent contract with each debtor, as they contained no express language allocating payments to individual items of collateral acquired through prior contracts. In re Shaw, 209 B.R. 393 (Bankr. N.D. Miss. 1996).

A purchase money chattel mortgage is a "purchase money security interest". Lonoke Prod. Credit Ass'n v. Bohannon, 238 Ark. 206, 379 S.W.2d 17 (1964).

7. After-acquired property.

Where manufacturing company, which had been making gun cabinets for another company under contract providing that such other company would furnish basic materials for cabinets, that it reserved title to such materials, and that it would buy assembled cabinets from manufacturer at reduced price, became insolvent and ceased operations after obtaining Small Business Administration loan from two banks that required manufacturer to execute security agreement in their favor in manufacturer's present and after-acquired inventory, and where such banks, after perfecting their security interests in such inventory by filing financial statements that were proper in form, content, and place of filing, attempted to enforce such security interests by taking possession of manufacturer's inventory, as against asserted interest therein of company supplying materials to manufacturer, (1) interest of supplier of materials was purchase-money security interest under UCC § 9-107(b); (2) such interest was not perfected under UCC § 9-304 by filing of financing statement concerning such materials and giving notice of claim thereto; and (3) under UCC § 9-312(3), such unperfected interest had no priority over perfected security interests of banks in such materials (which were part of manufacturer's inventory), where security interests of banks had properly attached under UCC § 9-204(1). Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

Lien on retail inventory items subsequently acquired as replacement for original items subject to lien is "purchase money security interest" within meaning of California Commercial Code provision providing that with certain exceptions no nonpossessory security interest, other than purchase money security interest, may be given or taken in or to inventory of retail merchant. Holzman v. L.H.J. Enters., Inc., 476 F.2d 949 (9th Cir. Cal. 1973), cert. denied, 414 U.S. 1135, 94 S. Ct. 878, 38 L. Ed. 2d 760 (1974).

Where debtor was corporation that operated retail clothing store, where secured party acquired perfected purchase money security interest in debtor's inventory including its proceeds and after-acquired property, where debtor corporation merged with other corporations, each operating retail clothing outlets, and, finally, where surviving corporation entered into assignment for benefit of creditors: (1) secured party had valid security interest in after-acquired inventory of debtor, notwithstanding that at time of assignment for benefit of creditors surviving corporation did not have in its possession any inventory purchased from secured party by surviving corporation for any of its constituent corporations; (2) after-acquired property clause extended to property acquired by surviving corporation after merger; and (3) financing statement on file at time of assignment for benefit of creditors was not deficient though it did not contain name of debtor-assignor. However, secured party did not have security interest in the proceeds of inventory from other stores not covered by security agreement. Inter Mt. Ass'n of Credit Men v. Villager, Inc., 527 P.2d 664 (Utah 1974).

The holder of a security interest in an automobile which qualified as "consumer goods" who releases that interest in exchange for a similar interest in another automobile which also qualified as "consumer goods" furnished new value for the later security interest. Rockland Credit Union, Inc. v. Gauthier Motors, Inc., 39 Mass. App. Dec. 180 (1967).

8. Lease.

Where lessor leased breeder stock to bankrupt with all progeny to be property of bankrupt and with first lien on progeny being granted under lease to lessor, this lien could not be equated with purchase money security interest, since element of acquiring rights in or use of collateral within meaning of UCC was missing; and lessor acquired nothing more than security interest under lease and was in same position as other suppliers to bankrupt who made swine production operation possible. Ingram v. Ozark Prod. Credit Ass'n, 468 F.2d 564 (5th Cir. Ala. 1972).

A bailment-lessor of trucks is the holder of a purchase money security interest in the trucks under this section. Commonwealth v. Two Ford Trucks, 185 Pa. Super. 292, 137 A.2d 847 (1958).

9. Lender.

Creditor who loaned money to debtor to enable debtor to perform contract did not establish existence of purchase-money security interest within meaning of UCC § 9-107(b), since such section contemplates that loaned funds be intended and actually used to purchase identifiable asset which will stand as secured party's collateral. Northwestern Nat'l Bank S.W. v. Lectro Sys., 262 N.W.2d 678 (Minn. 1977).

Where purchaser of cows already had all possible rights in cows with both possession and title, money advanced by bank enabled purchaser to pay seller for cows but did not enable purchaser to acquire any rights in cows, so that security interest of bank was not purchase money security interest. North Platte State Bank v. Production Credit Ass'n, 189 Neb. 44, 200 N.W.2d 1 (1972).

One who is not a seller but a lender may acquire a purchase money security interest in collateral to be purchased with proceeds of loan provided proceeds are in fact so used. Continental Oil Co. Agrico Chem. Co. Div. v. Sutton, 126 Ga. App. 78, 189 S.E.2d 925 (1972).

10. Particular applications.

Furniture dealer with security interest in household furniture and TV set purchased by bankrupt debtor could not claim perfected security interest in such goods under exception from filing requirements for consumer goods contained in UCC § 9-302(1)(d) where security agreement covered items purchased at different times with no information as to which items were paid for and which were not; furniture dealer's interest was not "purchase money security interest" since it was not taken or retained by dealer solely to secure all or part of collateral's price. In re Manuel, 507 F.2d 990 (5th Cir. Ga. 1975).

Where neither party has perfected his security interest, UCC § 9-312(5) determines priority between conflicting interests in same collateral; thus, where plaintiff-landlord had lien on tenant's property under terms of recorded lease which was valid under UCC § 9-204(3), but which was not perfected due to plaintiff's failure to file financing statement with secretary of state as required by UCC § 9-401(1)(c), and where defendant sold bar equipment to plaintiff's tenants under conditional sales contract and acquired purchase money security interest under UCC § 9-107(a), which was not perfected under UCC § 9-302(1) since defendant failed to obtain signatures of parties as required by UCC § 9-402(1), and where defendant subsequently repossessed and sold property in question, defendant's security interest took priority over plaintiff's either under theory that defendant perfected its security interest by repossessing and selling property or under theory that defendant's security interest attached prior to plaintiff's. Engelsma v. Superior Prods. Mfg. Co., 298 Minn. 77, 212 N.W.2d 884 (1973).

Record disclosed that new money was provided, as distinguished from payment of pre-existing claim or antecedent debt not yet due, so that there was an advance within UCC § 9-107(2); trust receipt from air conditioning distributor to debtor which was addressed to purchase money security holder proved that advance was "in fact so used" to enable debtor to acquire rights in collateral. Fedders Fin. Corp. v. Chiarelli Bros., 221 Pa. Super. 224, 289 A.2d 169 (1972).

Owner's mobile homes were placed on debtor's sales lot for purpose of display and retail sale to public; debtor possessed no indicia of ownership; held, owner had no purchase money security interest in mobile homes within UCC § 9-107 and was therefore under no obligation to notify creditor of ownership so as to preserve security interest therein. Taylor Mobile Homes v. Founders Inv. Corp., 238 So. 2d 116 (Fla. App. 1970), cert. denied, 248 So. 2d 167 (Fla. 1971).

B. Decisions Under Former Statutes.

11. In general.

Statute creates purchase-money lien on personal property from time of sale while it remains in buyer's hands or of one deriving title or possession through him with notice. Weiss, Dreyfous & Seiferth, Inc. v. Natchez Inv. Co., 166 Miss. 253, 140 So. 736 (1932); Paper Prods. Co. v. Mississippi State Tax Comm'n, 206 So. 2d 635 (Miss. 1968).

Since a purchaser by moving an airplane into Mississippi from Louisiana, where the sale was consummated, deprived the seller of his right to seize it in Louisiana, which had a purchase money lien statute, the purchaser could not complain of the seller's attachment of the airplane in Mississippi. Blount v. Hair, 228 Miss. 898, 90 So. 2d 5 (1956).

Where in a suit to establish a mechanic's lien against an automobile, defendant executed a bond and retained possession of the automobile, the automobile was not in custodia legis and the plaintiff could proceed in the replevin action without intervening in the mechanic's lien proceeding. Murdock Acceptance Corp. v. Smith, 222 Miss. 594, 76 So. 2d 688 (1955), corrected, 222 Miss. 608, 77 So. 2d 727 (1955).

The right of a plaintiff to obtain a personal judgment where he asserts a mechanic's lien against a truck, is one which the plaintiff can exercise in his own discretion. Hannan Motor Co. v. Darr, 212 Miss. 870, 56 So. 2d 64 (1952).

Section 337, Code of 1942, providing for purchase money lien on personalty is in derogation of common law and must be strictly construed. In re Monticello Veneer Co., 2 F. Supp. 27 (S.D. Miss. 1933).

In statute respecting purchase-money lien, words, "in hands of," means in possession of. Weiss, Dreyfous & Seiferth, Inc. v. Natchez Inv. Co., 166 Miss. 253, 140 So. 736 (1932).

Lien for purchase-money for personal property is not confined to exempt property. Frank v. Robinson, 65 Miss. 162, 3 So. 253 (1887).

12. Attachment of lien.

This section creates a lien on property in favor of the vendor for the unpaid purchase money from the time of its sale to continue as long as it remains in the hands of the first purchaser, or one deriving title or possession through him with notice that the purchase money was unpaid. Paper Prods. Co. v. Mississippi State Tax Comm'n, 206 So. 2d 635 (Miss. 1968).

This section does not confer on the vendor a mere right to acquire a lien on the property by seizing it under judicial process while in the hands of the first purchaser, but rather creates a lien on the property in favor of the vendor for the unpaid purchase money from the time of its sale to continue as long as it remains in the hands of the first purchaser, or one deriving title or possession through him, with notice that the purchase money was unpaid. Trenton Lumber Co. v. Boling, 230 Miss. 233, 92 So. 2d 440 (1957).

Where machinery and equipment have been in the possession or under the control of one claiming a mechanic's lien while being repaired, and he surrendered possession thereof to the owner, the lien was retained to the extent that is allowed in cases of liens for purchase money of goods, and was enforceable while the property remained in the hands of the owner, or in the hands of one deriving title or possession through the owner, with notice that the indebtedness represented by the mechanic's lien was unpaid. Billups v. Becker's Welding & Mach. Co., 186 Miss. 41, 189 So. 526 (1939).

Statutory purchase-money lien attached to laundry machinery delivered to local buyer pursuant to executory conditional sales contracts made in another state, but to be performed locally. Superior Laundry & Cleaners v. American Laundry Mach. Co., 170 Miss. 450, 155 So. 186 (1934).

The statute cannot have effect, after delivery to the buyer, to impress a lien for purchase money on property purchased beyond the territorial limits of the state. In re Tucker, 1 F. Supp. 18 (S.D. Miss. 1932).

Where personal property is bought under a promise by the purchaser to secure the price with a mortgage and after getting possession he refuses to execute the mortgage the seller has a statutory lien for the price. Kingsland & Douglas Mfg. Co. v. Massey, 69 Miss. 296, 13 So. 269 (1891).

13. —Property purchased for resale.

Seller of automobile trailers to an equipment company on credit had a lien thereon for the purchase money while it remained in the hands of the purchaser or one deriving title or possession through it with notice that the purchase money was unpaid, although the trailers were sold and delivered for the purpose of resale. Dorsey v. Latham, 194 Miss. 253, 11 So. 2d 897 (1943).

Vendor has lien on goods sold merchant for resale for unpaid purchase-money while in hands of first purchaser or one deriving title thereto with notice. Campbell Paint & Varnish Co. v. Hall, 131 Miss. 671, 95 So. 641 (1923).

14. Enforcement of lien.

Action of replevin does not lie when plaintiff's only claim to property is purchase money lien given plaintiff vendor by this section. Runnels v. Fairchild, 204 Miss. 287, 37 So. 2d 312 (1948).

One who makes oral sale and delivery of motor on credit, without retaining title to, or lien upon, motor to secure purchase price, has statutory lien under this section upon motor, which vests in him right to have motor seized by officer and to have a personal judgment for his demand and sale of motor through processes of court to satisfy his demand. Runnels v. Fairchild, 204 Miss. 287, 37 So. 2d 312 (1948).

Personal property lien suit may be filed at any time short of the general statute of limitations so long as during that time the property remains in the hands of the original lienor, or of one deriving title or possession through him, with notice that the lien money was unpaid. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335 (1940).

Alternative prayers in a bill of complaint to recover the value of certain building blocks sold under a written contract, or, if it was found that title thereto had passed to the purchaser, to enforce a purchase money lien against such building blocks, were not inconsistent, and where it was determined that title had passed to the purchaser, the seller was entitled to a trial of the issue whether the purchase money lien could be enforced against a subsequent purchaser. Morris v. Smith, 184 Miss. 618, 185 So. 548 (1939).

Unpaid conditional seller may elect between replevin and action to enforce statutory purchase-money lien. Superior Laundry & Cleaners v. American Laundry Mach. Co., 170 Miss. 450, 155 So. 186 (1934).

In action by unpaid conditional seller to enforce statutory purchase-money lien, introduction in evidence of notes without proof that they were unpaid was sufficient proof of indebtedness where buyer did not plead payment specially or by giving notice thereof under general issue. Superior Laundry & Cleaners v. American Laundry Mach. Co., 170 Miss. 450, 155 So. 186 (1934).

Resident of Mississippi, buying fishing equipment and leasing same of Louisiana fishermen, could not enjoin seller from prosecuting attachment suit in Louisiana. E.J. Platte Fisheries v. Wadford, 170 Miss. 617, 155 So. 161 (1934).

In suit to enforce purchase-money lien on automobiles, value of car is immaterial as between parties; in suit to enforce purchase-money lien on automobile in buyer's possession, writ of seizure and sheriff's return need not be introduced in evidence. Union Motor Car Co. v. Farmer, 151 Miss. 734, 118 So. 425 (1928).

Where plaintiff, suing in a justice court for materials furnished, made the affidavit required by the act 1884 (laws, p. 84), and had a writ of seizure and summons issued, it is error for the circuit court, on appeal, to dismiss the suit because the evidence of debt was not filed with the justice until two days after the issuance of the writ. Bryant v. Harris Lumber Co., 70 Miss. 683, 12 So. 585 (1893).

15. Waiver of lien.

Purchase-money lien not waived because of seller's knowledge that goods intended for resale in regular course of business. Campbell Paint & Varnish Co. v. Hall, 131 Miss. 671, 95 So. 641 (1923).

RESEARCH REFERENCES

ALR. Priority as between seller or conditional seller of personalty and claimant under after-acquired property clause of mortgage or other instrument. 86 A.L.R.2d 1152.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 25, 26, 28-50, 52-97.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:113 ("purchase money security interest" defined).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:396 (answer; defense; purchase money security interest not created).

§ 75-9-103A. "Production-money crops"; "production-money obligation"; production-money security interest; burden of establishing.

(a) A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.

(b) If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one (1) obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) A production-money security interest does not lose its status as such, even if:

(1) The production-money crops also secure an obligation that is not a production-money obligation;

(2) Collateral that is not production-money crops also secures the production-money obligation; or

(3) The production-money obligation has been renewed, refinanced, or restructured.

(d) A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — Priority of production-money security interests and agricultural liens, see § 75-9-324A.

§ 75-9-104. Control of deposit account.

(a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

SOURCES: Former 1972 Code § 75-9-104 [Codes, 1942, § 41A:9-104; Laws, 1966, ch. 316, § 9-104; Laws, 1977, ch. 452, § 7; Laws, 1996, ch. 460, § 22] is now found in comparable provisions enacted at § 75-9-109 by Laws, 2001, ch. 495, § 1. Present § 75-9-104 derived from 1972 Code § 75-8-106 [Laws, 1996, ch. 468, § 7] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of security interests in deposit account, see § 75-9-327.

Bank's rights and duties with respect to deposit accounts, see § 75-9-341.

Alienability of debtor's rights, see § 75-9-401.

§ 75-9-105. Control of electronic chattel paper.

(a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

SOURCES: Former 1972 Code § 75-9-105 [Codes, 1942, § 41A:9-105; Laws, 1966, ch. 316, § 9-105; Laws, 1977, ch. 452, § 8; Laws, 1978, ch. 356, § 1; Laws, 1990, ch. 384, § 48; Laws, 1996, ch. 460, § 23; Laws, 1996, ch. 468, § 57] is now found in comparable provisions enacted at § 75-9-102 by Laws, 2001, ch. 495, § 1. Present § 75-9-105 derived from 1972 Code § 75-8-106 [Laws, 1996, ch. 468, § 7] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 4, eff from and after July 1, 2013.

Cross References — Perfection of security interests in chattel paper, see § 75-9-312.

Perfection by control, see § 75-9-314.

Discharge of account debtor, see § 75-9-406.

§ 75-9-106. Control of investment property.

(a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 75-8-106.

(b) A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

SOURCES: Former 1972 Code § 75-9-106 [Codes, 1942, § 41A:9-106; Laws, 1966, ch. 316, § 9-106; Laws, 1977, ch. 452, § 9; Laws, 1996, ch. 460, § 24; Laws, 1996, ch. 468, § 58] is now found in comparable provisions enacted at § 75-9-102 by Laws, 2001, ch. 495, § 1. Present § 75-9-106 derived from 1972 Code § 75-8-106 [Laws, 1996, ch. 468, § 7] and former 1972 Code § 75-9-115 [Laws, 1996, ch. 468, § 59] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Perfection of security interest in investment property, see § 75-9-312.

Perfection by control, see § 75-9-314.

§ 75-9-107. Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Section 75-5-114(c) or otherwise applicable law or practice.

SOURCES: Former 1972 Code § 75-9-107 [Codes, 1942, § 41A:9-107; Laws, 1966, ch. 316, § 9-107] is now found in comparable provisions enacted at § 75-9-102 by Laws, 2001, ch. 495, § 1. Present § 75-9-107 derived from 1972

Code § 75-8-106 [Laws, 1996, ch. 468, § 7] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Restriction on assignment of letter-of-credit rights ineffective, see § 75-9-409.

§ 75-9-108. Sufficiency of description.

(a) Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e), a type of collateral defined in the Uniform Commercial Code;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

SOURCES: Former 1972 Code § 75-9-108 [Codes, 1942, § 41A:9-108; Laws, 1966, ch. 316, § 9-108] was deleted by Laws, 2001, ch. 495, § 2. Present § 75-9-108 derived from former 1972 Code §§ 75-9-110 [Codes, 1942, § 41A:9-110; Laws, 1966, ch. 316, § 9-110] and 75-9-115 [Laws, 1996, ch. 468, § 59] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Indication of collateral in financing statement, see § 75-9-504. Claims concerning inaccurate or wrongfully filed record, see § 75-9-518.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-110.

A. Generally.

6. In general.
7. Description by reference.
8. Standard of sufficiency.
9. —Objective standard.

B. Particular Descriptions.

10. Accounts.
11. After-acquired property.
12. Construction equipment.
13. Crops.
14. Farm implements.
15. Generalized descriptions.
16. Inventory.
17. Livestock.
18. Motor vehicles and boats.
19. Serial numbers.
20. —Erroneous serial numbers.
21. Miscellaneous.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-110.

A. Generally.

6. In general.

Pre-Code decisions as to the sufficiency of descriptions are still authority in the issue of whether a description "reasonably identifies that which is described." Piggott State Bank v. Pollard Gin Co., 243 Ark. 159, 419 S.W.2d 120 (1967).

7. Description by reference.

Description in security agreement, which made reference to supporting invoices that were subsequently prepared containing accurate description of merchandise purchased with charge account, was sufficient to create legally binding security interest. In re Moody, 62 B.R. 282 (Bankr. N.D. Miss. 1986).

Description of collateral in purchase-money security agreement by model and serial number alone meets requirements of UCC §§ 9-110 and 9-203(1)(b) where secured party is manufacturer or dealer in specialty appliances sold under a trade name. Personal Thrift Plan of Perry, Inc. v. Georgia Power Co., 242 Ga. 388, 249 S.E.2d 72 (1978).

Under UCC § 9-105(1)(h), which defines security agreement as one which "creates or provides for" a security interest, promissory note which included line, "This note is secured by a Security Interest in subject personal property as per invoices," qualified as security agreement; incorporation of invoices into promissory note by reference was sufficient description of collateral under UCC §§ 9-203(1)(b) and 9-110, when coupled with existence of financing statement containing more specific description. In re Amex-Protein Dev. Corp., 504 F.2d 1056 (9th Cir. Cal. 1974).

Security agreement describing collateral as "furniture as per attached listing," with no listing attached, did not adequately describe collateral. J.K. Gill Co. v. Fireside Realty, Inc., 262 Or. 486, 499 P.2d 813 (1972).

8. Standard of sufficiency.

Description of collateral in financing statement as consumer goods, personal property of all kinds and types, located on or about debtor's residence, not including household goods as defined in FTC rule, was sufficiently definite to permit perfection of security interest. In re Boykins, 120 B.R. 71 (Bankr. N.D. Miss. 1990).

Description of collateral in filed financing statement was sufficient under Texas UCC § 9-110 where statement contained nine separate pieces of information about the collateral, only one item of substance was incorrect, and great majority of other errors were minor and not likely to mislead any person who might examine the recorded statement. McGehee v. Exchange Bank & Trust Co., 561 S.W.2d 926 (Tex. Civ. App. 1978), ref. n.r.e (May 10, 1978).

UCC § 9-110, which deals with sufficiency of description of either personal property or real estate, was intended to reject requirement of detailed description and to make test of sufficiency simply that the description makes possible identification of thing described. Mammoth Cave

Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

Purpose of filing financing statement is notice to any third party; and requirement of description of collateral is satisfied if description reasonably informs third parties that certain identifiable item belonging to or in possession of debtor may be subject to prior security interest and that further inquiry is necessary to determine if it is exact item being offered them as collateral. Associates Capital Corp. v. Bank of Huntsville, 49 Ala. App. 523, 274 So. 2d 80 (Civ. App. 1973).

Description of collateral contained in security agreement must be reasonably specific; and term "equipment" in omnibus clause of security agreement did not include two automobiles owned by debtor corporation. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Description of collateral in security agreement is intended only to evidence agreement of parties and need only make possible identification of thing described. United States v. First Nat'l Bank, 470 F.2d 944 (8th Cir. Neb. 1973).

Trust receipts meet the minimum requirements of the UCC where they are writings signed by the debtor granting security interests in specifically described merchandise to the distributor. In re United Thrift Stores, Inc., 363 F.2d 11 (3d Cir. N.J. 1966).

A financing statement is sufficient if it contains a statement indicating the types or describing the items of collateral and any description of personal property is sufficient whether or not it is specific if it reasonably identifies what it described. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

A security agreement may be held to cover particular collateral even though such collateral is not specifically described. Thus, an agreement covering "All contents of luncheonette including equipment such as..." followed by an enumeration of particular items and containing a reference to "all property and articles now, and which may hereafter be, used...with [or] added...to...any of the foregoing described property" was sufficient to include a cash register which was to be used with some of the other equipment, even though the cash register was not specifically referred to. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

9. —Objective standard.

Where certain items of equipment were not described in security agreement covering debtor's drilling rigs, disputed items could not be included within security agreement by "external evidence" consisting of unsigned financing statement describing disputed items and evidence that debtor mortgaged and secured party took, pursuant to mortgage, security on all of debtor's equipment. Jones & Laughlin Supply v. Dugan Prod. Corp., 85 N.M. 51, 508 P.2d 1348 (Ct. App. 1973).

In considering whether a security agreement covers particular collateral, the debtor's intent must be judged by the language of the security agreement and not by possible inferences from the surrounding circumstances. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

B. Particular Descriptions.

10. Accounts.

Description of collateral as "accounts receivable" sufficiently identified collateral as to put prospective creditor on notice of probability that security agreement did embrace present and future accounts receivable. South County Sand & Gravel Co. v. Bituminous Pavers Co., 106 R.I. 178, 256 A.2d 514 (1969).

Where bank held a security interest in debtor's inventory and accounts receivable currently owned and thereafter to be acquired, the financing statement reasonably identified the collateral which was described as "inventory and accounts receivable," and the omission of the word "future" was immaterial. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

A financing statement covering "all present and future accounts receivable submitted" sufficiently identified the collateral security. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

11. After-acquired property.

General description of collateral, which consisted of debtor's farming equipment, in financing statement filed by bank as "all equipment now owned or hereafter acquired by debtor," without indicating location of such equipment or its nature as farming equipment, was inadequate under UCC § 9-402(1) and § 9-110, and did not perfect bank's lien in collateral, so as to render it superior to right to collateral of trustee in bankruptcy. In re Werth, 443 F. Supp. 738 (D. Kan. 1977).

In bank's suit to have security interest in used-car dealer's inventory declared to be first and prior security interest as against interests of three persons to whom such inventory was transferred, where evidence showed that bank's security interest was perfected by filing, covered future advances, and gave bank security interest in all present and after-acquired property and proceeds; that one transferee took trust receipts and titles to specific vehicles to secure loans made to dealer and entered into security agreement granting security interest in vehicles identified in trust receipts, which agreement was filed after filing of bank's security agreement; that second transferee took trust receipts as security for loans made to dealer, but did not enter into security agreement with dealer; and that third transferee's purchase for resale of over half of dealer's inventory may have been financed by first transferee, (1) under UCC § 9-110, description of collateral in bank's security agreement included all of dealer's inventory and proceeds therefrom; (2) under UCC § 9-205, alleged failure of bank to supervise dealer's inventory properly could not constitute basis for denying equitable relief to bank; (3) security interest of first transferee was junior to bank's security interest because it was perfected after perfection of bank's interest; (4) security interest of second transferee was junior to bank's security interest because it was never perfected; and (5) security interest of third transferee was also subject to bank's security interest because such transferee was bulk purchaser under UCC § 1-201(9) and not buyer in ordinary course of business under UCC § 9-307(1). Community Bank v. Jones, 278 Or. 647, 566 P.2d 470 (1977).

Order directing seizure of tractors and trailers which were listed as collateral in security agreement and which had been sold by debtor to defendants could not stand where there was factual question as to whether, under UCC § 9-306(2), creditor, by reason of its prior dealings with debtor, had authorized it to sell chattels free of any liens by asserting its right to receive "proceeds" if chattels were sold; order directing seizure of trailer not specifically mentioned in security agreement was improper under UCC §§ 9-110 and 9-203(1)(b) where general language in after-acquired property clause of security agreement was insufficient to cover vehicles other than those specifically listed, unless they were given and accepted in replacement of specified vehicles. Long Island Trust Co. v. Porta Aluminum Corp., 44 A.D.2d 118 (2d Dep't 1974).

Description of collateral in security agreement is intended only to evidence agreement of parties and need only make possible identification of thing described; and description of all farm and other equipment now owned or hereafter acquired by debtor was sufficient description of after-acquired water irrigation equipment as collateral in which secured party had security interest. United States v. First Nat'l Bank, 470 F.2d 944 (8th Cir. Neb. 1973).

The description of collateral contained in financing statement ("Present and after-acquired accounts receivable") meets the requirements of UCC § 9-110. In re Carmichael Enters., Inc., 334 F. Supp. 94 (N.D. Ga. 1971), aff'd, 460 F.2d 1405 (5th Cir. Ga. 1972).

Description of collateral as "accounts receivable" sufficiently identified collateral as to put prospective creditor on notice of probability that security agreement did embrace present and future accounts receivable. South County Sand & Gravel Co. v. Bituminous Pavers Co., 106 R.I. 178, 256 A.2d 514 (1969).

Where bank held a security interest in debtor's inventory and accounts receivable currently owned and thereafter to be acquired, the financing statement reasonably identified the collateral which was described as "inventory and accounts receivable," and the omission of the word "future" was immaterial. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

"All after acquired property of like kind" is a sufficient description under this section. Cain v. Country Club Delicatessen of Saybrook, Inc., 25 Conn. Supp. 327, 203 A.2d 441 (1964).

A provision of the security agreement that it applies "to all collateral of the kind which is subject to this agreement which debtor may acquire at any time" manifests a clear intent to include future inventory of the debtor. Thomson v. O.M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (1962).

12. Construction equipment.

Under UCC § 9-110, description of collateral in security agreement was sufficient to include a caterpillar motor grader where description referred to "all earth movers, blades, rollers, laydown machines, trucks, automobiles, and pickup trucks owned by, or in which the debtor has an interest, and now located at debtor's place of business." Empire Mach. Co. v. Union Rock & Materials Corp., 119 Ariz. 145, 579 P.2d 1115 (Ct. App. 1978).

The description of a caterpillar scraper by an incorrect serial number is insufficient in the absence of some physical description appearing of record in the security instrument which provides a key to the identity of the property. Yancey Bros. Co. v. Dehco, Inc., 108 Ga. App. 875, 134 S.E.2d 828 (1964).

The description of a certain "Unit" Model 614 Backhoe or shovel in security agreements and financing statements as "⅝ yd. Shovel, Deisel Unit, Booms, Drag Buckets," "1951 Unit, ½ yd. Diesel Shovel, Model 614, Ser. 51636," and "1-Unit Model 614 Diesel Basic Machine with five operating clutches & power dipper trip, and dragline, Serial #61536," was sufficient. National-Dime Bank v. Cleveland Bros. Equip. Co., 20 Pa. D. & C.2d 511 (1959).

13. Crops.

Security agreement did not contain sufficient description of land on which debtor's crops were to be grown, so that bank did not have valid security interest therein, where agreement did nothing to identify land other than to specify its acreage and county in which is was located. In re Byrd, 66 B.R. 261 (Bankr. N.D. Miss. 1986).

Description of collateral as crops and "proceeds" from crops was sufficient to include federal subsidy payments to which debtor became entitled. In re Munger, 495 F.2d 511 (9th Cir. Cal. 1974).

Where financing statement and security agreement purportedly gave secured party security interest in all of debtor's crops, but contained accurate legal description of certain farm lands belonging to debtor and omitted 3 other parcels of land on which debtor planted and harvested crops, crop description was insufficient to put third person on notice under UCC. People's Bank v. Pioneer Food Indus., Inc., 253 Ark. 277, 486 S.W.2d 24 (1972).

Although §§ 9-402 and 9-110 were intended by legislature to require something less than legal description of land to apprise purchasers and creditors of security interest in growing crops, financing statement which described realty on which crops were raised as "land owned or leased by debtor in Cherokee County, Kansas" was insufficient to perfect security interest in such crops. Chanute Prod. Credit Ass'n v. Weir Grain & Supply, Inc., 210 Kan. 181, 499 P.2d 517 (1972).

A description of seven acres of crops to be produced on the land of a named individual is insufficient since it failed to show that the debtor grew exactly seven acres of crops on the land and that no one else grew any crops there. Piggott State Bank v. Pollard Gin Co., 243 Ark. 159, 419 S.W.2d 120 (1967).

14. Farm implements.

Under UCC § 9-402(1) and UCC § 9-110, term "farm equipment" was sufficiently specific description of tractor to perfect security interest therein of federal Farmers Home Administration (FHA), since any reasonable third party who might consider accepting tractor as collateral would receive ample notice from secured party's filed financing statement that further inquiry was in order. United States v. Crittenden, 600 F.2d 478 (5th Cir. Ga. 1979).

General description of collateral, which consisted of debtor's farming equipment, in financing statement filed by bank as "all equipment now owned or hereafter acquired by debtor," without indicating location of such equipment or its nature as farming equipment, was inadequate under UCC § 9-402(1) and § 9-110, and did not perfect bank's lien in collateral, so as to render it superior to right to collateral of trustee in bankruptcy. In re Werth, 443 F. Supp. 738 (D. Kan. 1977).

Tools are ordinarily defined as implements used by hand, and use of words "tilling and harvesting tools" in financing statement did not accurately describe power-driven farm machinery such as mower, reaper, fertilizer, so as to perfect security interests in those items. In re Anselm, 344 F. Supp. 544 (W.D. Ky. 1972).

15. Generalized descriptions.

Where security agreement described collateral as follows: "Machinery equipment and fixtures; Molds, tools, dyes, component parts including specifically (certain described molds)," description was sufficient to satisfy UCC § 9-110 and it included not only the specifically described molds but also the debtor's other "machinery, equipment and fixtures." In re Sarex Corp., 509 F.2d 689 (2d Cir. N.Y. 1975).

Financing statement containing signatures of debtor and secured party, address of secured party, and containing description of collateral: "All Olivetti Corp. of America copying machines which have been delivered but not paid in full" met sufficiency test of description of collateral under UCC § 9-110 and formal requisites of financing statement under UCC § 9-402 and description reflected security interest under UCC § 1-201(37). First Nat'l Bank & Trust Co. v. Olivetti Corp. of Am., 130 Ga. App. 896, 204 S.E.2d 781 (1974).

Collateral listed in financing statement as "refrigerators" was sufficient to cover flower box refrigeration unit. Beneficial Fin. Co. v. Van Shaw, 476 S.W.2d 772 (Tex. Civ. App. 1972).

Financing statement covering "all personal property" did not describe property by type or description and was inadequate to perfect security interest, since it did not substantially comply with all statutory requirements, and errors were more than minor within meaning of § 9-402(5). In re Fuqua, 461 F.2d 1186 (10th Cir. Kan. 1972).

"All furniture, fixtures, and equipment now owned and hereafter acquired by the borrower" reasonably identifies collateral subject to a security interest. United States v. Antenna Sys., 251 F. Supp. 1013 (D.N.H. 1966).

A security agreement may be held to cover particular collateral even though such collateral is not specifically described. Thus, an agreement covering "All contents of luncheonette including equipment such as..." followed by an enumeration of particular items and containing a reference to "all property and articles now, and which may hereafter be, used...with [or] added...to...any of the foregoing described property" was sufficient to include a cash register which was to be used with some of the other equipment, even though the cash register was not specifically referred to. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

16. Inventory.

Trial court erred in holding that description within security agreement giving on lien on "Company owned inventory" was insufficient identification of secured property; held, fact issue was raised as to whether goods could possibly be identified under agreement. Security Tire & Rubber Co. v. Hlass, 246 Ark. 1113, 441 S.W.2d 91 (1969).

A description of goods as "inventory" is sufficient. To require more, such as an enumeration of all the types of articles handled, would be unreasonably burdensome and neither within the letter or the spirit of the Code. Moreover, a person selling to a retailer must be aware of the character of his goods and the disposition contemplated by him and that the goods would become inventory and therefore be subject to any security agreement declaring a security interest in future inventory. Thomson v. O.M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (1962).

17. Livestock.

Where security agreement covering herd of cattle described collateral as "84 Holstein Cows and 14 Holstein Heifers, 1 to 2 ½ years of age," description of collateral was sufficient under UCC § 9-110 to create enforceable security interest under UCC § 9-203(1)(b); furthermore, where security agreement provided that debtors had "right to sell cows that ceased to be productive or to otherwise cull the herd; but they shall at all times retain a sufficient number of replacement heifers, or otherwise provide satisfactory replacements, to maintain a herd not smaller than that being now purchased" and that "Buyers agree to grant t[sic] Sellers a lien upon said property [cattle] and upon the replacements therefor...," use of term "replacement" was adequate to create security interest in after-acquired property (i.e., cattle) under UCC § 9-204(3). Whitworth v. Krueger, 98 Idaho 65, 558 P.2d 1026, 99 A.L.R.3d 1046 (1976).

Where first purchase money mortgage described the secured property as "fifty one (51) head of Holstein heifers with increase" and second purchase money mortgage describes the property as "twenty four (24) Holstein heifers with increase", held, description is not so inexact as to render security instrument defective, but it is sufficiently uncertain, where other Holstein cattle are owned by the debtor, to cast a substantial burden upon the purchase money mortgagee to be able to clearly identify collateral in order to obtain a priority interest over another holder of a security interest. United States v. Mid-States Sales Co., 336 F. Supp. 1099 (D. Neb. 1971).

18. Motor vehicles and boats.

Financing statement that covered boat was valid, notwithstanding figures which showed year of manufacture and constituted part of description of boat were erroneous by one year. Adams v. Nuffer, 550 P.2d 181 (Utah 1976).

Unlike a financing statement which is designed merely to put creditors on notice that further inquiry is prudent, a security agreement embodies the intentions of the parties and is the primary source to which a creditor's or potential creditor's inquiry is directed and must be reasonably specific; thus term "equipment" in omnibus clause of security agreement did not include automobiles owned by bankrupt corporation. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Use of letters "COF" in a financing statement describing a model of tractor known as "Cab over tandum" with appropriate serial numbers was sufficient to meet requirements of definite description imposed by UCC § 9-110, even though financing statement failed to indicate what initials "COF" stood for. In re Richards, 455 F.2d 281 (6th Cir. Mich. 1972).

Repair order reserving security interest in automobile in dealer's favor and signed by customer adequately described automobile within meaning of Code § 9-203 by means of notations as to brand of automobile, year, model, speedometer reading and license number. River Oaks Chrysler-Plymouth, Inc. v. Barfield, 482 S.W.2d 925 (Tex. Civ. App. 1972).

The necessity of listing by serial number property used as collateral in a security agreement was removed by the Uniform Commercial Code, and a description of two automobiles as passenger and commercial automobiles financed by a bank was sufficient. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

The description of two automobiles, in a security agreement between a bank and an automobile dealer, as "passenger and commercial automobiles" financed by the bank, was sufficient, considering the nature of the agreement, the nature of the business of the two parties and the business practices of automobile dealers and their financing agents, since it made possible the identification of the property intended to be covered by the agreement. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

19. Serial numbers.

Description of collateral in purchase-money security agreement by model and serial number alone meets requirements of UCC §§ 9-110 and 9-203(1)(b) where secured party is manufacturer or dealer in specialty appliances sold under a trade name. Personal Thrift Plan of Perry, Inc. v. Georgia Power Co., 242 Ga. 388, 249 S.E.2d 72 (1978).

Where, after wrecked tractor was repaired, salvaged parts not used in repair and consisting of cab, front axle and chassis, engine, consisting of engine block and crank, together with other parts, some new and some salvage from other vehicles, were used to rebuild another tractor, security agreement and financing statement containing identification of tractor built from salvage parts in terms of year of original tractor and original Vehicle Identification Number as imprinted on salvaged engine block contained sufficient description of collateral to satisfy UCC. Richardson v. United States, 358 F. Supp. 994 (E.D. Ark. 1973).

Use of letters "COF" in a financing statement describing a model of tractor known as "Cab over tandum" with appropriate serial numbers was sufficient to meet requirements of definite description imposed by UCC § 9-110, even though financing statement failed to indicate what initials "COF" stood for. In re Richards, 455 F.2d 281 (6th Cir. Mich. 1972).

The description of a certain "Unit" Model 614 Backhoe or shovel in security agreements and financing statements as "⅝ yd. Shovel, Deisel Unit, Booms, Drag Buckets," "1951 Unit, ½ yd. Diesel Shovel, Model 614, Ser. 51636," and "1-Unit Model 614 Diesel Basic Machine with five operating clutches & power dipper trip, and dragline, Serial #61536," was sufficient. National-Dime Bank v. Cleveland Bros. Equip. Co., 20 Pa. D. & C.2d 511 (1959).

The necessity of listing by serial number property used as collateral in a security agreement was removed by the Uniform Commercial Code, and a description of two automobiles as passenger and commercial automobiles financed by a bank was sufficient. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

20. —Erroneous serial numbers.

Where description of printing press contained in equipment lease and financing statement was reasonably sufficient to permit identification of collateral under UCC § 9-110, it was sufficient to create enforceable security interest, notwithstanding description of press contained in equipment lease included incorrect serial number. Matter of Vintage Press, Inc., 1977, 552 F. 2d 1145

Security agreement and financing statement adequately described collateral as required by UCC §§ 9-203, 9-402, and 9-110 where, although secured party had erroneously omitted first digit of identification number of automobile, omitted digit represented information previously described in words on each document. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

21. Miscellaneous.

Where security agreement and financing statement described collateral as watch and also identified watch by brand and model number, description of collateral was sufficient under UCC § 9-110; where security agreement described second item of collateral as, "ladies' bridal set white gold," but financing statement described collateral as, "one ladies' bracelet set-white gold," description of collateral in security agreement was sufficient to create security interest but description in financing statement did not reasonably identify collateral and thus secured party did not have perfected security interest in bridal set. DWG, Inc. v. Peltier, 563 P.2d 152 (Okla. 1977).

RESEARCH REFERENCES

ALR. Sufficiency of description of property, as against third persons, in chattel mortgage on farm equipment, machinery, implements, and the like. 32 A.L.R.2d 929.

Sufficiency of description in chattel mortgage as covering all property of a particular kind. 2 A.L.R.3d 839.

Sufficiency of description of collateral in financing statement under UCC §§ 9-110 and 9-402. 100 A.L.R.3d 10.

Sufficiency of description of collateral in security agreement under UCC §§ 9-110 and 9-203. 100 A.L.R.3d 940.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 159 et seq.

6 Am. Jur. Pl & Pr Forms, Secured Transactions, Forms 9:71-9:72 (sufficiency of description).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1672 through 253:1690 (sufficiency of description).

CJS. 79 C.J.S., Secured Transactions §§ 46, 68.

SUBPART 2.

APPLICABILITY OF ARTICLE.

SEC.
75-9-109. Scope.
75-9-110. Security interests arising under Article 2 or 2A.

§ 75-9-109. Scope.

(a) Except as otherwise provided in subsections (c) and (d), this article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) A consignment;

(5) A security interest arising under Section 75-2-401, 75-2-505, 75-2-711(3), or 75-2A-508(5), as provided in Section 75-9-110; and

(6) A security interest arising under Section 75-4-210 or 75-5-118.

(b) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) This article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this article;

(2) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(3) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 75-5-114.

(d) This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 75-9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary, or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 75-9-315 and 75-9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) Section 75-9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 75-9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in Sections 75-9-203 and 75-9-308;

(B) Fixtures in Section 75-9-334;

(C) Fixture filings in Sections 75-9-501, 75-9-502, 75-9-512, 75-9-516, and 75-9-519; and

(D) Security agreements covering personal and real property in Section 75-9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 75-9-315 and 75-9-322 apply with respect to proceeds and priorities in proceeds; or

(13) To a transfer by this state or a governmental unit of this state.

SOURCES: Former 1972 Code § 75-9-109 [Codes, 1942, § 41A:9-109; Laws, 1966, ch. 316, § 9-109] is now found in comparable provisions enacted at § 75-9-102 by Laws, 2001, ch. 495, § 1. Present § 75-9-109 derived from former 1972 Code §§ 75-9-102 [Codes, 1942, § 41A:9-102; Laws, 1966, ch. 316, § 9-102; Laws, 1977, ch. 452, § 5] and 75-9-104 [Codes, 1942, § 41A:9-104; Laws, 1966, ch. 316, § 9-104; Laws, 1977, ch. 452, § 7; Laws, 1996, ch. 460, § 22] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2002, ch. 453, § 5, eff from and after passage (approved Mar. 20, 2002.)

Cross References — Statutory definition of personal property, see § 1-3-41.

Mobile home being personal property for the purpose of a security interest therein, see § 27-53-15.

Motor vehicle sales finance law, see § 63-19-1 et seq.

Security interests under motor vehicle titles law, see § 63-21-1 et seq.

Assignment or pledge of wages, see § 71-1-45.

Territorial application of Code, see § 75-1-108.

Sale on approval and sale or return; consignment sales and rights of creditors, see § 75-2-326.

Sale of lease contract, see § 75-2A-303.

General effectiveness of security agreement, see § 75-9-201.

Liens, generally, see § 85-7-1 et seq.

Landlord's lien, see §§ 89-7-51, 89-7-53.
Uniform Federal Lien Registration Act, see § 85-8-1 et seq.
Security interest under condominium law, see § 89-9-9.

JUDICIAL DECISIONS

I. Under Current Law.

1. Agricultural liens.
2.-5. [Reserved for future use.]

II. Under Former § 75-9-102.

A. In General.

6. Generally.
7. Prior law compared.
8. Construction with other law.
9. —Federal law.
10. Conflict of laws.

B. Exclusions.

11. In general.
12. Landlords' liens.
13. Preemptive federal law.
14. Real estate transactions.
15. Effect of clause (3).
16. Title acts.

C. Transactions in Property or Fixtures.

17. In general.
18. Intent.
19. Goods.
20. —Motor vehicles.
21. General intangibles.
22. Chattel paper or accounts.

D. Security Devices.

23. In general.
24. Assignments.
25. Chattel mortgages.
26. Conditional sales.
27. Consignments.
28. Factors' liens.
29. Leases creating security interests.
30. —Not creating security interests.
31. Promissory notes.
32. Purchase money security interests.
33. —After-acquired property.
34. Surety or guaranty.
35. —Subrogation.
36. Trust receipts.

E. Procedure.

37. In general.
38. Grace period.
39. Necessity of filing.
40. Place of filing.
41. Priority.
42. Remedies for conversion.
43. Remedies; foreclosure and sale.

F. Decisions Under Former Statutes.

44. In general.

III. Under Former § 75-9-104.

45. In general.
46. Security interest subject to federal statute: 9-104(a).
47. Landlord's lien: 9-104(b).
48. —Not excluded; created by contract.
49. —Priority over other liens.
50. Statutory lien for services or materials: 9-104(c).
51. —Not excluded.
52. Transfer of claim for wages, salary or other compensation: 9-104(d).
53. —Not excluded.
54. Sale or assignment of accounts, contract rights, or chattel paper: 9-104(f).
55. —Not excluded.
56. Transfer of interest in or claim under insurance policy: 9-104(g).
57. —Not excluded.
58. Right represented by judgment: 9-104(h).
59. Right of set-off: 9-104(i).
60. Transfer of interest in or lien upon real estate; mortgages: 9-104(j).
61. Transfer of interest in or lien upon real estate; leases and rents: 9-104(j).
62. —Not excluded.
63. Transfer of interest in deposit account or tort claim: 9-104(k).
64. —Not excluded; certificates of deposit.
65. Miscellaneous transactions.

I. Under Current Law.

1. Agricultural liens.

Two lessors did not have priority over a bank with a perfected lien on a lessee's government payments, even though the bank had actual notice of the leases before it loaned money to the lessee as: (1) Miss. Code Ann. § 75-9-109(a)(2) applied to agricultural liens; (2) perfection of agricultural liens was required under Miss. Code Ann. §§ 89-7-51(1) and 75-9-101 et seq.; (3) the lessors did not perfect their liens; (4) there was not a confidential relationship between the bank and the lessors for constructive trust purposes; and (5) the bank was not unjustly enriched as it was entitled to apply the government payments to the lessee's loan. Pair A Dice Farms, Inc. v. InSouth Bank of Covington, 118 So. 3d 165 (Miss. Ct. App. Dec. 11, 2012), writ of certiorari denied by 2013 Miss. LEXIS 387 (Miss. July 25, 2013), writ of certiorari denied by 117 So. 3d 330, 2013 Miss. LEXIS 388 (Miss. 2013).

2.-5. [Reserved for future use.]

II. Under Former § 75-9-102.

A. In General.

6. Generally.

It is the clear policy of Article 9 to look to the substance, rather than to the form, of an agreement to determine whether or not it is a security agreement. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

A secured transaction is valid as between the parties without the filing required to obtain perfection as against third persons. United States v. Thompson, 272 F. Supp. 774 (E.D. Ark. 1967), aff'd, 408 F.2d 1075 (8th Cir. Ark. 1969).

A security interest is an interest in property which secures payment for the performance of an obligation. Under Article 9 the UCC does not adopt a title or lien theory of security interests and rights and obligations and remedies are not determined by the location of the title, but rather on function, compliance with statutory requirements, and the nature of the transaction. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

A secured transaction is valid as between the parties without the filing required to obtain perfection as against third persons. United States v. Thompson, 272 F. Supp. 774 (E.D. Ark. 1967), aff'd, 408 F.2d 1075 (8th Cir. Ark. 1969).

The holder of the security interest in goods retains title in the abstract where a purchase-financing transaction is entered into, whether the security device is a conditional sale or any of the other types mentioned in this section. Commonwealth v. Two Ford Trucks, 185 Pa. Super. 292, 137 A.2d 847 (1958).

7. Prior law compared.

The 1966 amendment of Official Comment 4 to UCC § 9-102, illustrating the operation of UCC § 9-102(3), produced two effects. First, the amendment's deletion of references to mortgages distinguishes between the pledge of a note, which is a separate and distinct contract, and the underlying real-estate mortgage. Thus, where a promissory note and real-estate mortgage together become the subject of a security interest, only that portion of the package which is unrelated to the real property is now covered by UCC § 9-102(3). Second, the added language in the amendment makes clear that the promissory note itself falls within the scope of Article 9 by virtue of its status as an instrument. Rucker v. State Exch. Bank, 355 So. 2d 171 (Fla. App. 1978).

Where a lease arrangement serves a commercial function closely analogous to such other common financing methods as conditional sales and chattel mortgages, the parties involved should be subject to both the duties imposed by, and the protection afforded under, the Uniform Commercial Code and its interpretive case law. Nevada Nat'l Bank v. Huff, 94 Nev. 506, 582 P.2d 364 (1978) (lease of pickup truck).

Substitution by Uniform Commercial Code of concept of security interest for such pre-Code security devices as chattel mortgage or conditional sales contract did not render criminal statute-which made it offense for one who had mortgaged personal property to another, or who had possession of personal property under contract of sale whereby vendor retained title to property, to remove such property from county where it was located-inapplicable to secured transactions under Uniform Commercial Code, since mere use of chattel mortgage or conditional sales contract after effective date of adoption of Uniform Commercial Code will not, under UCC

§ 9-102(1)(a), defeat a security interest that is otherwise valid under the code's provisions. State v. Denny, 116 Ariz. 361, 569 P.2d 303 (Ct. App. 1977).

The UCC has eliminated the older, technical, and restricted categories of security interests; gone are the definitional difficulties and transactional fictions of the chattel mortgage, the conditional sale, and the trust receipt, establishing in their stead a general set of rules for the creation of a security interest in the secured party. In re United Thrift Stores, Inc., 363 F.2d 11 (3d Cir. N.J. 1966).

The instant section relieves the court of the burden of construing instruments as either chattel mortgages or conditional sales contracts, which was a critical factor to consider in security instruments prior to the adoption of the Uniform Commercial Code. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

The Pennsylvania Chattel Mortgage Act of 1945 was superseded by the Uniform Commercial Code. In re Consorto Constr. Co., 212 F.2d 676 (3d Cir. Pa. 1954), cert. denied, 348 U.S. 833, 75 S. Ct. 57, 99 L. Ed. 657 (1954).

The Uniform Commercial Code created a new system of secured transactions and provided a method of safeguarding the interests of creditors secured by personal property when the property remained in the hands of the debtors. Commonwealth v. Davis, 4 Pa. D. & C.2d 182 (1954).

8. Construction with other law.

In debtor's action to enjoin creditor from enforcing two security agreements against collateral therefor, where evidence showed (1) that debtor and creditor had entered into such security agreements and that one of them had been perfected in several states, including New Jersey, (2) that second security agreement had in no way diminished validity of first security agreement, (3) that debtor's reason for seeking injunction against enforcement of such security agreements was creditor's alleged oral agreement to refrain from foreclosing on any debts due it in order to allow debtor to attain a healthy operating condition, (4) that creditor, after concluding that debtor could not attain a healthy operating condition, formally declared debtor to be in default under such security agreements and to owe creditor over $27 million in principal debt, and (5) that creditor had then accelerated maturity of all of debtor's term obligations and demanded payment of all principal and interest on debtor's demand obligations, court held (1) that debtor's claim of alleged oral agreement to refrain from foreclosure was unsupported by the evidence, (2) that under (a) UCC § 1-105(1), dealing with power of parties to choose law applicable to their transactions, (b) UCC § 9-102(1), which intends that substantive law of place where collateral is located governs without regard to possible contracts in other jurisdictions, and (c) UCC § 9-103, which lays down numerous choice-of-law rules regarding creation, perfection, and priorities in multistate security-agreement transactions, law of New Jersey governed security agreements in suit, (3) that security interests created by security agreements in suit were valid, (4) that debtor had failed to show any reason for granting injunctive relief against their enforcement and (5) that on debtor's default, creditor under UCC § 9-501(1), as adopted in New Jersey, had right to reduce its claim to judgment and to foreclose on the collateral. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (applying New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Under state bailment statute requiring recordation of leases of personal property "in the manner provided by law for the recording of [chattel] mortgages," trustee in bankruptcy was properly ordered to turn over leased equipment to lessor where lessor met filing requirements of UCC § 9-401 et seq.; although instruments in question were true leases and were excluded from coverage of Article 9 under UCC § 9-102(2), since lease does not create security interest under UCC § 1-201(37), bailment statute was not inconsistent with any provision of UCC and was not repealed by UCC § 10-103, the Code's general repealer. In re Bazen, 425 F. Supp. 1184 (D.S.C. 1977), aff'd, 571 F.2d 574 (4th Cir. S.C. 1978), aff'd sub nom. First South Leasing Co. v. Abrams, 571 F.2d 575 (4th Cir. S.C. 1978) (applying South Carolina law).

As secured transactions are not governed by the provisions of Article 2 it follows that the unconscionable section of the Code does not apply to a secured transaction and it is therefore no objection that the advantage that a creditor has under a secured transaction may appear inequitable or even unconscionable. In re Advance Printing & Litho Co., 277 F. Supp. 101 (W.D. Pa. 1967), aff'd, 387 F.2d 952 (3d Cir. Pa. 1967).

A credit sale of heavy machinery under which the purchaser took back a security interest and note is not a loan requiring application of the Pennsylvania usury statute. Equipment Fin., Inc. v. Grannas, 207 Pa. Super. 363, 218 A.2d 81 (1966).

In a case where the issue was whether plaintiff had been guilty of a breach of contract in making instalment payments on the purchase of an airplane so as to give the seller a right to repossess the plane, the question whether Massachusetts law applied to the transaction was to be determined under subsection (1) of § 1-105 of the instant chapter and not under subsection (2) of said section in the reference therein to §§ 9-102 and 9-103 applicable to secured transactions because the issues in such case involved the duties of the parties under the primary obligation and because the validity or perfection of the security interest were not involved. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

9. —Federal law.

Uniform Commercial Code on secured transactions has been judicially adopted as federal common law. United States v. Topeka Livestock Auction, Inc., 392 F. Supp. 944 (N.D. Ind. 1975).

Conditional vendor's perfection of security interest in vessel, although sufficient under UCC Article 9, did not, by itself, under maritime lien law, establish his priority over subsequent maritime lienor. Matthews v. Richmond, 11 Wash. App. 703, 525 P.2d 810 (1974).

Federal law rather than state law would control an action based upon an alleged conversion by an auctioneer by sale at public auction of cattle against which the Farmers Home Administration had a recorded security agreement executed in its favor by the owner of the cattle. United States v. Sommerville, 324 F.2d 712 (3d Cir. Pa. 1963), cert. denied, 376 U.S. 909, 84 S. Ct. 663, 11 L. Ed. 2d 608 (1964).

10. Conflict of laws.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Where motor vehicle was purchased in Florida under contract executed in Florida, and security interest was created under Article 9 of UCC, and where vehicle was subsequently removed by debtor to state of Georgia where it was repossessed and resold by agent of secured party, Georgia law applied to repossession, resale, and right to deficiency judgment, absent agreement that law of other state would govern, since collateral was located in Georgia at time of repossession and resale. Lewis v. First Nat'l Bank, 134 Ga. App. 798, 216 S.E.2d 347 (1975).

In action involving determination of priority between lien resulting from attachment in California of trousers produced in foreign countries and consigned to purchaser in North Carolina, and bank's security interest resulting from financing agreements executed and filed in North Carolina, any right of bank was subordinate to attachment lien, where, pursuant to UCC § 9-102, the "situs" rule for choice of law applied, and where, under California law, bank had not perfected its security interest at time trousers were sited in California and were attached. Joint Holdings & Trading Co. v. First Union Nat'l Bank, 50 Cal. App. 3d 159 (2d Dist. 1975).

Under Georgia statute providing that if security interest was perfected under law of jurisdiction where vehicle was when security interest attached, and (a) if name of holder of security interest was shown on existing certificate of title issued by that jurisdiction, his security interest continued perfected in Georgia, or (b) if name of holder of security interest was not shown on existing certificate title, security interest continued perfected in Georgia for six months after first certificate of title was issued in Georgia, Maryland bank with perfected security interest in automobile took priority over Georgia automobile dealer where bank financed purchase of automobile, Maryland certificate of title was issued to purchaser stating that automobile was subject to bank's security interest, purchaser subsequently forged a satisfaction of lien and delivered fraudulent alteration to State of Maryland, purchaser moved to Georgia, applied to Georgia Motor Vehicle Department for certificate of title which was issued to him free from liens in reliance on fraudulently altered Maryland documents, and purchaser, using Georgia title certificate, then sold automobile to dealer. Where issue is one of security interest perfection in motor vehicle, UCC yields to Motor Vehicle Certificate of Title Act. Strother Ford, Inc. v. First Nat'l Bank, 132 Ga. App. 268, 208 S.E.2d 25 (1974).

Location of collateral at time of transaction determines governing law without regard to possible contacts in other jurisdictions. First Nat'l Bank & Trust Co. v. Atlas Credit Corp., 417 F.2d 1081 (10th Cir. Okla. 1969) (applying Oklahoma law).

B. Exclusions.

11. In general.

3. The institution of distraint proceedings obviously does not fall within the intendment of this section. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

12. Landlords' liens.

Article 9 of UCC does not apply to statutory landlord's lien and, since landlord's statutory lien was not protected as security interest under UCC, it was not entitled to priority under § 6323(a) of Federal Tax Lien Act of 1966. On the other hand, contractual landlord's liens are not excluded from filing requirement of UCC and, therefore, landlord's contractual lien must have been properly filed to have priority over government's tax lien. United States (Treasury Dep't, IRS) v. Globe Corp., 113 Ariz. 44, 546 P.2d 11 (1976).

13. Preemptive federal law.

The federal recording statute preempts the field of security interests in aircraft. International Atlas Servs., Inc. v. Twentieth Century Aircraft Co., 251 Cal. App. 2d 434 (2d Dist. 1967), cert. denied, 389 U.S. 1038, 88 S. Ct. 775, 19 L. Ed. 2d 827 (1968).

Federal statute determines the priority as between the conditional seller of an airplane and the seller of parts added to the airplane. International Atlas Servs., Inc. v. Twentieth Century Aircraft Co., 251 Cal. App. 2d 434 (2d Dist. 1967), cert. denied, 389 U.S. 1038, 88 S. Ct. 775, 19 L. Ed. 2d 827 (1968).

14. Real estate transactions.

Article 9 of Uniform Commercial Code applies only to creation of security interest in personal property or fixture and is not applicable to creation of real estate mortgage; thus, provisions of Uniform Commercial Code were not bar to action to foreclose mortgage. State Nat'l Bank v. Dick, 164 Conn. 523, 325 A.2d 235 (1973).

15. Effect of clause (3).

The 1966 amendment of Official Comment 4 to UCC § 9-102, illustrating the operation of UCC § 9-102(3), produced two effects. First, the amendment's deletion of references to mortgages distinguishes between the pledge of a note, which is a separate and distinct contract, and the underlying real-estate mortgage. Thus, where a promissory note and real-estate mortgage together become the subject of a security interest, only that portion of the package which is unrelated to the real property is now covered by UCC § 9-102(3). Second, the added language in the amendment makes clear that the promissory note itself falls within the scope of Article 9 by virtue of its status as an instrument. Rucker v. State Exch. Bank, 355 So. 2d 171 (Fla. App. 1978).

16. Title acts.

Under Georgia statute providing that if security interest was perfected under law of jurisdiction where vehicle was when security interest attached, and (a) if name of holder of security interest was shown on existing certificate of title issued by that jurisdiction, his security interest continued perfected in Georgia, or (b) if name of holder of security interest was not shown on existing certificate title, security interest continued perfected in Georgia for six months after first certificate of title was issued in Georgia, Maryland bank with perfected security interest in automobile took priority over Georgia automobile dealer where bank financed purchase of automobile, Maryland certificate of title was issued to purchaser stating that automobile was subject to bank's security interest, purchaser subsequently forged a satisfaction of lien and delivered fraudulent alteration to State of Maryland, purchaser moved to Georgia, applied to Georgia Motor Vehicle Department for certificate of title which was issued to him free from liens in reliance on fraudulently altered Maryland documents, and purchaser, using Georgia title certificate, then sold automobile to dealer. Where issue is one of security interest perfection in motor vehicle, UCC yields to Motor Vehicle Certificate of Title Act. Strother Ford, Inc. v. First Nat'l Bank, 132 Ga. App. 268, 208 S.E.2d 25 (1974).

In Missouri the perfection of security interests in motor vehicles is not governed by the Code but by a special statute applicable thereto. In re Jackson, 268 F. Supp. 434 (E.D. Mo. 1967), aff'd, 385 F.2d 775 (8th Cir. Mo. 1967).

C. Transactions in Property or Fixtures.

17. In general.

California has omitted UCC § 9-313 relating to fixtures, and has altered UCC § 9-102, providing in new subdivision (1), subsection (c) that "as against third parties having or acquiring an interest in or a lien on the real property, the rights and duties of the parties to the secured transaction are governed by the law of this state relating to real property and fixtures," the California cases holding that a lessor gains no interest in fixtures which are installed by the lessee but owned by a third party. EAC Credit Corp. v. Bass, 21 Cal. App. 3d 645 (1st Dist. 1971).

Transactions between a bankrupt and its creditor reclaimant intended to create a security interest are within the purview of Article 9 of the Uniform Commercial Code. In re Komfo Prods. Corp., 247 F. Supp. 229 (E.D. Pa. 1965).

As a matter of definition no security interest can exist with respect to services of a debtor for the reason that collateral is limited to property. Howarth v. Universal C.I.T. Credit Corp., 203 F. Supp. 279 (W.D. Pa. 1962).

This section relates to any transaction intended to create a security interest in personal property, and to any financing sale of accounts, contract rights or chattel paper. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

18. Intent.

Code provisions relating to secured transactions apply to any transactions (regardless of its form) which is intended to create security interest and particularly to chattel mortgages, conditional sales, or other lien or title retention contract. Karp Bros. v. West Ward Sav. & Loan Ass'n, 47 Pa. D. & C.2d 363 (1969), aff'd, 440 Pa. 583, 271 A.2d 493 (1970).

Where both the automobile dealer and the finance company were without any intention that the circumstances of the mistaken delivery of automobiles should have any effect as any kind of relationship, security or otherwise, arguments pertaining to the secured transactions rules of the Uniform Commercial Code were inapplicable with reference to the dispute between the parties. Bruce Lincoln-Mercury, Inc. v. Universal C.I.T. Credit Corp., 325 F.2d 2 (3d Cir. Pa. 1963).

The principal test as to whether a transaction comes within the Secured Transaction Article is whether the transaction is intended to have effect as security. Bruce Lincoln-Mercury, Inc. v. Universal C.I.T. Credit Corp., 325 F.2d 2 (3d Cir. Pa. 1963).

This section relates to any transaction intended to create a security interest in personal property, and to any financing sale of accounts, contract rights or chattel paper. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

19. Goods.

Where it is possible that some of the goods might not be "lawful" collateral, the transaction will be interpreted where possible as a cash sale of the goods which cannot be collateral and as a secured transaction merely as to the balance of the goods. In re Ter-A-Tom Assocs., 386 F.2d 90 (3d Cir. N.J. 1967) (question existed whether inventory of liquor could be collateral).

20. —Motor vehicles.

Two transactions involving motor vehicle liens which were filed with state division of motor vehicles were secured transactions within meaning of UCC § 9-102(1)(a); however, under UCC § 9-302(3)(b), persons having such liens were not required to file financial statements in order to perfect their security interests. Georgia-Pacific Corp. v. Consolidated Suppliers, Inc., 332 So. 2d 368 (Fla. Dist. Ct. App. 1st Dist. 1976).

Automobile "lease agreement" was, in fact, secured transaction within meaning of Article 9 of Uniform Commercial Code where agreement was of indefinite duration and, at its inception, passed all risks and indicia of ownership of vehicle to purported lessee, in that lessee not only insured against any loss to leasing company of its capitalized cost, but after 26 months, was entitled to any surplus funds if and when car was sold, and where at end of 56 months, car would, at option of leasee, pass to her at no cost, since monthly installment payments would have equaled capitalized cost of vehicle. Right of debtor to receive notice of intended disposition of collateral after default may not be limited under UCC § 9-501(1), (3)(b), and inasmuch as leasing company failed to comply with notice provision of UCC § 9-504(3) before selling repossessed vehicle, it was precluded from recovering deficiency judgment and could only recover sums owed to it prior to repossession as well as repossession charges. Avis Rent-A-Car Sys. v. Franklin, 82 Misc. 2d 66 (1975).

Where a bank, under its wholesale credit plan, financed the purchase of automobiles by a dealer who for automobiles used in its business executed installment sales contracts as both buyer and seller, the subsequent acceptance of an assignment of such installment sales contracts by the bank constituted a novation whereby financing under the installment contracts was substituted for financing under the wholesale credit plan and the bank became the holder of a security interest in the vehicles within the meaning of subsection 1(a) of this section. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

21. General intangibles.

A state liquor license is a general intangible and is subject to the Code provisions governing security interests in such property. Paramount Fin. Co. v. United States, 13 Ohio Misc. 195, 379 F.2d 543 (6th Cir. Ohio 1967).

Liquor license was "property" which could be subjected to security interest under Article 9 of UCC. Gibson v. Alaska Alcoholic Beverage Control Bd., 377 F. Supp. 151 (D. Alaska 1974) (applying Alaska law).

22. Chattel paper or accounts.

Under UCC § 9-102(1) and UCC § 1-201(37), Article 9 applies not only to any transaction that is intended to create security interest in chattel paper, accounts, or contract rights, but also to any sale of accounts, contract rights, or chattel paper. Ralston Purina Co. v. Detwiler, 173 Ind. App. 513, 364 N.E.2d 180 (1977).

Substitution by Uniform Commercial Code of concept of security interest for such pre-Code security devices as chattel mortgage or conditional sales contract did not render criminal statute-which made it offense for one who had mortgaged personal property to another, or who had possession of personal property under contract of sale whereby vendor retained title to property, to remove such property from county where it was located-inapplicable to secured transactions under Uniform Commercial Code, since mere use of chattel mortgage or conditional sales contract after effective date of adoption of Uniform Commercial Code will not, under UCC § 9-102(1)(a), defeat a security interest that is otherwise valid under the code's provisions. State v. Denny, 116 Ariz. 361, 569 P.2d 303 (Ct. App. 1977).

UCC § 9-106 differentiates an "account" from a "contract right" in that an "account" is a right to payment that has been earned by performance while a "contract right" is a right to payment to be earned in the future; once the right to payment has been earned, the contract right is extinguished and an account arises; while the distinction may have little significance (1971 Editorial Board Recommendation for UCC was that term "contract right" be eliminated as unnecessary), they are distinct categories of property each of which may serve as collateral in secured transaction under UCC § 9-102(1)(a). E. Turgeon Constr. Co. v. Elhatton Plumbing & Heating Co., 110 R.I. 303, 292 A.2d 230 (1972).

Under Article 9, all forms of secured transactions, such as conditional sales and chattel mortgages, are treated in the same manner. Miller v. Bonafied Ready Mix Corp., 4 U.C.C. Rep. Serv. 881 (1967, NY Sup).

D. Security Devices.

23. In general.

Code provisions relating to secured transactions apply to any transactions (regardless of its form) which is intended to create security interest and particularly to chattel mortgages, conditional sales, or other lien or title retention contract. Karp Bros. v. West Ward Sav. & Loan Ass'n, 47 Pa. D. & C.2d 363 (1969), aff'd, 440 Pa. 583, 271 A.2d 493 (1970).

The principal test as to whether a transaction comes within the Secured Transaction Article is whether the transaction is intended to have effect as security. Bruce Lincoln-Mercury, Inc. v. Universal C.I.T. Credit Corp., 325 F.2d 2 (3d Cir. Pa. 1963).

24. Assignments.

Insurer's claim that a contractor's assignment of an application for a payment under a construction contract as collateral for a loan that the insurer had made to the contractor was not subject to the UCC was rejected as the appellate court held that insurer contractually took a security interest by way of assignment in contractor's right to payment for construction work. St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank, 882 So. 2d 766 (Miss. 2004).

A vendor, by making an unconditional assignment of his note and deed of trust to a bank, and by filing that assignment in the Chancery Clerk's office conjunctive with an erroneous pay-off figure given by the bank to the closing attorney for a second bank which lent purchasers money secured by the real estate, required that the vendor's deed of trust be subordinated to the second bank's deed of trust. Cain v. Robinson, 523 So. 2d 29 (Miss. 1988).

Debtors, as owners of collateral, were not parties to purported oral assignment between judgment creditors to adverse claimant who had satisfied judgment; adverse claimant, who was attorney, himself referred to collateral as security; held, assignment was intended as security and not as mere satisfaction of judgment. Frank v. Von Stith, 123 Ill. App. 2d 239, 263 N.E.2d 259 (1st Dist. 1970).

Where a bank, under its wholesale credit plan, financed the purchase of automobiles by a dealer who for automobiles used in its business executed installment sales contracts as both buyer and seller, the subsequent acceptance of an assignment of such installment sales contracts by the bank constituted a novation whereby financing under the installment contracts was substituted for financing under the wholesale credit plan and the bank became the holder of a security interest in the vehicles within the meaning of subsection 1(a) of this section. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

25. Chattel mortgages.

As between the parties, a chattel mortgage is a secured transaction. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

A chattel mortgage is a secured transaction within the meaning of this section. Lonoke Prod. Credit Ass'n v. Bohannon, 238 Ark. 206, 379 S.W.2d 17 (1964).

A chattel mortgage instrument qualifies as a security agreement under the Code. In re Kelley, 54 Berks C.L.J. 106 (Pa).

26. Conditional sales.

Where document evidencing transaction involving walk-in food freezer was titled "Contract of Sale and Agreement," parties termed themselves buyer and seller and expressed desire to consummate sale of freezer, monthly payments of "rent" were in reality interest on deferred purchase price, transaction was conditional sale, rather than lease, and contract created security interest in seller; and since seller never filed financing statement to perfect his security interest, perfected security interest of Small Business Administration in buyer's equipment and fixtures had priority. Witmer v. Kleppe, 469 F.2d 1245 (4th Cir. W. Va. 1972) (applying West Virginia law).

This article as appearing in the Arkansas Uniform Commercial Code governed a "conditional sales contract note" covering carpeting, bedding and furniture supplied to a nonprofit corporation. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

The security interest of a conditional seller is not destroyed because the buyer has used the property in question-an automobile-in the illegal transportation of liquor and the property is forfeited by the state government. Accordingly the court will direct that the secured party be paid the amount of his debt from the proceeds of the sale of the property. Commonwealth v. One 1960 Chevrolet, 78 Dauph. Co. 154 (Pa).

27. Consignments.

As a result of the definition of "security interest" in UCC § 1-201(37) and the provisions of UCC § 9-102(2), only those consignments intended as security are directly subject to the provisions of UCC Art 9 concerning secured transactions, but all consignments, whether intended as security or not, are subject to the requirements of UCC § 2-326, which is in UCC Art 2 dealing with sales. GECC v. Town & Country Mobile Homes, Inc., 117 Ariz. 562, 574 P.2d 50 (Ct. App. 1977).

Where the consignee of ladies' accessories entered an agreement with a manufacturer of ladies' gloves, whereby the manufacturer would deliver gloves on consignment directly to stores with title to the gloves remaining in the manufacturer and the consignee receiving a commission for having arranged the retail sales, and the goods were never delivered to the consignee's place of business; the assignee of creditors of the consignee had no right to merchandise remaining in possession of the manufacturer previously consigned nor to any proceeds received by the manufacturer from the sale of merchandise previously consigned. In re Mincow Bag Co., 29 A.D.2d 400 (1st Dep't 1968), aff'd, 24 N.Y.2d 776, 300 N.Y.S.2d 115, 248 N.E.2d 26 (1969).

A true consignment of merchandise intended for sale in which there is no obligation to pay for the goods unless they are sold is not subject to this Article except as provided in § 2-326. In re Mincow Bag Co., 53 Misc. 2d 599 (1967), aff'd, 29 A.D.2d 400, 288 N.Y.S.2d 364 (1st Dep't 1968), aff'd, 24 N.Y.2d 776, 300 N.Y.S.2d 115, 248 N.E.2d 26 (1969).

28. Factors' liens.

"Bill of sale" describing automobile, setting out terms of payment, providing that bankrupt shall insure auto until he has paid for it in full, and signed by both parties did not satisfy requirements of written security agreement under UCC, even though in addition bankrupt had signed Application for Missouri title designating a first lien in favor of plaintiff.

Shelton v. Erwin, 472 F.2d 1118 (8th Cir. Mo. 1973).

An agreement between an equipment manufacturer and a finance company to the effect that the finance company was under no responsibility to record or file security paper was deemed waived by the finance company's retention of, and inaction upon, a letter from the manufacturer accompanying its transmittal of a conditional sales contract and judgment note requesting the finance company to record the paper, and the finance company's failure to comply with the statute placed the burden of loss from the dissipation of the security upon its shoulders. Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

UCC § 9-106 differentiates an "account" from a "contract right" in that an "account" is a right to payment that has been earned by performance while a "contract right" is a right to payment to be earned in the future; once the right to payment has been earned, the contract right is extinguished and an account arises; while the distinction may have little significance (1971 Editorial Board Recommendation for UCC was that term "contract right" be eliminated as unnecessary), they are distinct categories of property each of which may serve as collateral in secured transaction under UCC § 9-102(1)(a). E. Turgeon Constr. Co. v. Elhatton Plumbing & Heating Co., 110 R.I. 303, 292 A.2d 230 (1972).

Factor's common law liens are not affected by the Code. In re Summit Hdwe., Inc., 20 Ohio Op. 2d 426, 302 F.2d 397, 96 A.L.R.2d 717 (6th Cir. Ohio 1962), cert. denied, 371 U.S. 882, 83 S. Ct. 154, 9 L. Ed. 2d 118 (1962).

The Code displaces factor's lien acts. In re Freeman, 294 F.2d 126 (3d Cir. N.J. 1961) (dictum).

A manufacturer who delivers goods to a retailer on credit is not a factor within a factor's lien law but may protect his interest by means of a security agreement under the Code. In re Freeman, 294 F.2d 126 (3d Cir. N.J. 1961) (dictum as to effect of the Code).

29. Leases creating security interests.

Under UCC § 9-102(1)(a) and (2) and UCC § 1-201(37), contract for lease of automobile was lease intended for security and not "pure lease" where it provided, among other things, (1) that on termination of agreement prior to expiration of fixed term, lessee was to return vehicle to lessor, (2) that lessor was then obligated to accept highest available cash offer at wholesale for vehicle and to notify lessee of any "gain or loss," which was difference between wholesale price accepted for vehicle and its "termination value" as determined by formula contained in lease agreement, (3) that lessee would owe lessor "depreciation value" of vehicle, as offset by amount received from its disposition at wholesale, and would receive from lessor any "gain" over such "depreciation value," (4) that lessee would have to pay all license fees and taxes, and (5) that lessee would also have to pay amounts specifically denominated as "sales tax" and "security deposit." Bill Swad Leasing Co. v. Stikes, 571 F.2d 1361 (5th Cir. Ala. 1978) (applying Alabama and Ohio law; stating that termination formula of lease recognized lessee's equity in leased vehicle, that required security deposit of $1,000 was equivalent of down payment on vehicle, and that fact that lease agreement did not contain option to purchase was not controlling).

Under UCC § 1-201(37) and UCC § 9-102(2), purported five-year "lease" of printing equipment was actually instalment-sale contract which provided for an excessive rate of interest that rendered the contract void for usury where (1) lessor was finance company that was actually engaged in financing the sale of such printing equipment; (2) all risk of loss or damage to leased property was placed on lessee; (3) contract provided same remedies on lessee's default in payment of rent, even at end of first month, that would be available to a conditional seller or a mortgagee on a similar delinquency; (4) contract expressly provided that lessee, at lessor's request, would join lessor in executing financial statements pursuant to the Uniform Commercial Code; and (5) lessee, after all payments had been made under the purported "lease," could acquire title to the leased property by paying lessor nominal sum therefor. Bell v. Itek Leasing Corp., 262 Ark. 22, 555 S.W.2d 1 (1977).

Automobile "lease agreement" was, in fact, secured transaction within meaning of Article 9 of Uniform Commercial Code where agreement was of indefinite duration and, at its inception, passed all risks and indicia of ownership of vehicle to purported lessee, in that lessee not only insured against any loss to leasing company of its capitalized cost, but after 26 months, was entitled to any surplus funds if and when car was sold, and where at end of 56 months, car would, at option of leasee, pass to her at no cost, since monthly installment payments would have equaled capitalized cost of vehicle. Right of debtor to receive notice of intended disposition of collateral after default may not be limited under UCC § 9-501(1), (3)(b), and inasmuch as leasing company failed to comply with notice provision of UCC § 9-504(3) before selling repossessed vehicle, it was precluded from recovering deficiency judgment and could only recover sums owed to it prior to repossession as well as repossession charges. Avis Rent-A-Car Sys. v. Franklin, 82 Misc. 2d 66 (1975).

Five-year equipment leases, containing options to purchase for nominal price at conclusion at lease term, were security agreements within meaning of UCC and, thus, were governed by UCC. Wilson Leasing Co. v. Seaway Pharmacal Corp., 53 Mich. App. 359, 220 N.W.2d 83 (1974).

Lease was "one intended for security" and, hence, was security agreement as defined by UCC § 1-201(37), rather than true lease, where, inter alia, lessee had option to purchase, had right to apply 93% of rentals against purchase price of equipment, and was liable for full rental for entire minimum period though property was returned lessor; since lessor did not file financing statement covering leased equipment, its rights were subordinate to those of creditors of lessee who obtained perfected security interest in equipment. Percival Constr. Co. v. Miller & Miller Auctioneers, Inc., 387 F. Supp. 882 (W.D. Okla. 1973), aff'd, 532 F.2d 166 (10th Cir. Okla. 1976) (applying Oklahoma law).

Contract which required plaintiff to purchase sophisticated billing machine and lease it to defendant for 5 years and 4 months at fixed monthly rental, with option to defendant of renewing lease at its expiration for yearly rental in same amount at monthly rental during term, was "title retention contract and lease intended as a security" to which Article 9, rather than Article 2, of UCC applied. Leasco Data Processing Equip. Corp. v. Starline Overseas Corp., 74 Misc. 2d 898 (1973), aff'd, 45 A.D.2d 992, 360 N.Y.S.2d 199 (1st Dep't 1974), appeal dismissed, 35 N.Y.2d 645 (1974), appeal dismissed, 35 N.Y.2d 963, 365 N.Y.S.2d 179, 324 N.E.2d 557 (1974).

Code provisions are applicable to "bailment lease" involving restaurant equipment on property subject to mortgage. Karp Bros. v. West Ward Sav. & Loan Ass'n, 47 Pa. D. & C.2d 363 (1969), aff'd, 440 Pa. 583, 271 A.2d 493 (1970).

A lease-purchase agreement covering air compressing machine which provided that 85 percent of the rental was to be applied on the specified purchase price of the machinery was a security interest created by contract. United Rental Equip. Co. v. Potts & Callahan Contracting Co., 231 Md. 552, 191 A.2d 570 (1963) (applying Pennsylvania law).

30. —Not creating security interests.

Lease of radio equipment for five years at agreed price, with title to property remaining in lessor and with possession of equipment to be returned to lessor at expiration of lease, did not constitute "security interest". McGuire v. Associates Capital Servs. Corp., 133 Ga. App. 408, 210 S.E.2d 862 (1974).

Where plaintiff and defendant entered into agreement which purported to be lease of accounting machine manufactured by third party, where agreement provided that defendant would make 60 monthly payments $150.05 to plaintiff and that at end of lease period, five years, defendant would have option to purchase machine for 10 percent of its initial cost, and where defendant defaulted after making nine payments, plaintiff replevied machine, sold it at private sale, and brought action against defendant to recover balance due under lease, trial court did not err in finding that transaction was lease, not security interest, that it was not subject to UCC Article 9, and that plaintiff was entitled to deficiency judgment, notwithstanding plaintiff failed to notify defendant of sale pursuant to UCC § 9-504(3); without evidence of market value of machine at termination of lease, it could not be said that option to purchase for 10 percent of original purchase price was option to purchase for "nominal consideration" within meaning of UCC § 1-201(37). Granite Equip. Leasing Corp. v. Acme Pump Co., 165 Conn. 364, 335 A.2d 294 (1973).

A lease of newspaper composing room equipment specifically stating it contained the entire agreement between the parties, providing that lessee acquired no interest in leased property except that of use, and giving lessor right to demand and take possession of property on termination of lease or in event of default was a bona fide lease, and lessor was not required to file a financing statement to preserve its right of possession after default. In re Atlanta Times, Inc., 259 F. Supp. 820 (N.D. Ga. 1966), aff'd, 383 F.2d 606 (5th Cir. Ga. 1967).

31. Promissory notes.

The 1966 amendment of Official Comment 4 to UCC § 9-102, illustrating the operation of UCC § 9-102(3), produced two effects. First, the amendment's deletion of references to mortgages distinguishes between the pledge of a note, which is a separate and distinct contract, and the underlying real-estate mortgage. Thus, where a promissory note and real-estate mortgage together become the subject of a security interest, only that portion of the package which is unrelated to the real property is now covered by UCC § 9-102(3). Second, the added language in the amendment makes clear that the promissory note itself falls within the scope of Article 9 by virtue of its status as an instrument. Rucker v. State Exch. Bank, 355 So. 2d 171 (Fla. App. 1978).

Cable television installation agreements used as collateral to secure payment of promissory notes due former limited partner were "general intangibles" under UCC § 9-102(1)(a), and were not affected by UCC § 9-104(f), exclusion of "contract rights" from perfecting of valid security interests, where none of rights under security transaction were for payment of money and it was not contested that parties intended to create security interests. Dynair Elecs. Inc. v. Video Cable, Inc., 55 Cal. App. 3d 11 (4th Dist. 1976).

32. Purchase money security interests.

Purchase money security interests are not loans under any of the provisions of this article, nor does it attempt to regulate financing charges-approving, apparently a "time price differential" on credit sales. Equipment Fin., Inc. v. Grannas, 207 Pa. Super. 363, 218 A.2d 81 (1966).

A vendor's security interest in the nature of a purchase money mortgage is recognized under the Code. Thomson v. O.M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (1962).

33. —After-acquired property.

Lien on retail inventory items subsequently acquired as replacement for original items subject to lien is "purchase money security interest" within meaning of California Commercial Code provision providing that with certain exceptions no nonpossessory security interest, other than purchase money security interest, may be given or taken in or to inventory of retail merchant. Holzman v. L.H.J. Enters., Inc., 476 F.2d 949 (9th Cir. Cal. 1973), cert. denied, 414 U.S. 1135, 94 S. Ct. 878, 38 L. Ed. 2d 760 (1974).

The exception in UCC § 9-102(4) for purchase money security interests may extend to after-acquired property. In re Piro, 331 F. Supp. 171 (S.D. Cal. 1971), aff'd, 476 F.2d 949 (9th Cir. Cal. 1973) (applying California UCC).

34. Surety or guaranty.

A surety's interest in completing a construction project is not sufficient to be a security interest "created by contract" under UCC § 9-102(2). Alaska State Bank v. General Ins. Co. of Am., 579 P.2d 1362 (Alaska 1978).

Execution of guarantee was not Code transaction; guarantee was not "transaction ... which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts," under UCC § 9-102(1)(a); neither did guarantee of accounts receivable fall within coverage of Article 3 of UCC, §§ 3-102 to 3-805, formalities of which apply only to guarantees of commercial paper. EAC Credit Corp. v. King, 507 F.2d 1232 (5th Cir. 1975) (applying Mississippi law).

Guarantee was not "transaction ... which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts," under UCC § 9-102(1)(a). EAC Credit Corp. v. King, 507 F.2d 1232 (5th Cir. 1975) (applying Mississippi law).

Surety claiming under terms of performance bond application was not entitled to equitable lien upon proceeds from sale of contractor's personal property, and did not have contract right but only security interest which it was required to file and perfect. Aetna Cas. & Sur. Co. v. J.F. Brunken & Son, 357 F. Supp. 290 (D.S.D. 1973) (applying South Dakota law).

Article 9 applies only to consensual security interests; thus, since surety's interest, arising in connection with bonding of public work's contractor, was not consensual, but derived from status inherent in being surety, Article 9 did not apply and conflict between rights of surety and secured third party would be resolved without reference to Article 9. First Vt. Bank & Trust Co. v. Village of Poultney, 134 Vt. 28, 349 A.2d 722 (1975).

35. —Subrogation.

Article 9 applies only to consensual security interests; thus, since surety's interest, arising in connection with bonding of public work's contractor, was not consensual, but derived from status inherent in being surety, Article 9 did not apply and conflict between rights of surety and secured third party would be resolved without reference to Article 9. First Vt. Bank & Trust Co. v. Village of Poultney, 134 Vt. 28, 349 A.2d 722 (1975).

Subrogation rights are not "security interest" under UCC § 9-102(2). United States Fid. & Guar. Co. v. First State Bank, 208 Kan. 738, 494 P.2d 1149 (1972).

While Article 9 applies to security interests "created by contract," surety's right does not depend on contract and surety's claim to legal or equitable subrogation is not "security interest" under Article 9 of UCC, and is not affected by surety's failure to file financing statement. United States Fid. & Guar. Co. v. First State Bank, 208 Kan. 738, 494 P.2d 1149 (1972).

This chapter applies only to security interests created by contract and does not apply to the sureties on a defaulting general contractor's bond who, after payment of their principal's obligations for labor and materials furnished become subrogated to its rights to receive unpaid moneys due him under public contracts, and as between the sureties and the receivers for the defaulting contractor they are entitled to all sums then due to him. Jacobs v. Northeastern Corp., 416 Pa. 417, 206 A.2d 49, 11 A.L.R.3d 1220 (1965).

36. Trust receipts.

Article 9 of UCC includes trust receipts and did not abolish them; consequently, guarantee agreement executed by guarantors covered indebtedness of debtor arising out of its trust receipt with creditor. American Fiber Glass, Inc. v. GECC, 529 S.W.2d 298 (Tex. Civ. App. 1975).

The failure to adhere to the form of a trust receipt does not render a sale one on open credit where the parties conducted themselves wholly consistently with an inventory security transaction. In re United Thrift Stores, Inc., 363 F.2d 11 (3d Cir. N.J. 1966).

A vendor's security interest in the nature of a trust receipt transaction is recognized under the Code. Thomson v. O.M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (1962).

E. Procedure.

37. In general.

Where charges, in prosecution for cheating by false pretenses, related to sale of mortgaged personal property without notice to buyer of the mortgage, trial court did not err in denying motion to dismiss indictment on ground that personal-property mortgages had been abolished by Uniform Commercial Code, since UCC § 9-102(2) expressly recognizes continued existence of personal-property mortgages and Official Comment to that section makes clear that purpose of the code is not to abolish existing security devices, but to make legal relationships arising out of a particular security device depend on matters other than mere legal form of the device. State v. Gullifer, 384 A.2d 48 (Me. 1978).

Although Article 9 of UCC contains no specific provision establishing cause of action against third party for conversion of property upon which another holds a security interest, that omission does not preclude or preempt another remedy; thus, in absence of facts creating waiver or release or showing acquiescence or consent on part of secured party to sale of property covered by security agreement, auctioneer who sold cattle subject to security interest was liable to secured party for conversion of cattle. Hills Bank & Trust Co. v. Arnold Cattle Co., 22 Ill. App. 3d 138, 316 N.E.2d 669 (3d Dist. 1974).

Where both the automobile dealer and the finance company were without any intention that the circumstances of the mistaken delivery of automobiles should have any effect as any kind of relationship, security or otherwise, arguments pertaining to the secured transactions rules of the Uniform Commercial Code were inapplicable with reference to the dispute between the parties. Bruce Lincoln-Mercury, Inc. v. Universal C.I.T. Credit Corp., 325 F.2d 2 (3d Cir. Pa. 1963).

38. Grace period.

Since Code § 9-103(3) 4-month grace period from filing was designed to protect secured parties from debtors absconding with collateral, it does not apply to secured party who knowingly transferred collateral pursuant to non-negotiable bill of lading. In re Automated Bookbinding Servs., Inc., 471 F.2d 546 (4th Cir. Md. 1972) (applying Maryland law).

Under Mississippi UCC assignee of automobile conditional sales contract was not entitled to priority over trustee in bankruptcy, where assignee's security interest remained perfected for 4 months after automobile was brought into Mississippi from Alabama, at which time security interest expired since assignee did not comply with filing provisions of Code. In re Partain, 351 F. Supp. 750 (N.D. Miss. 1972).

39. Necessity of filing.

Two transactions involving motor vehicle liens which were filed with state division of motor vehicles were secured transactions within meaning of UCC § 9-102(1)(a); however, under UCC § 9-302(3)(b), persons having such liens were not required to file financial statements in order to perfect their security interests. Georgia-Pacific Corp. v. Consolidated Suppliers, Inc., 332 So. 2d 368 (Fla. Dist. Ct. App. 1st Dist. 1976).

40. Place of filing.

Under Georgia statute providing that if security interest was perfected under law of jurisdiction where vehicle was when security interest attached, and (a) if name of holder of security interest was shown on existing certificate of title issued by that jurisdiction, his security interest continued perfected in Georgia, or (b) if name of holder of security interest was not shown on existing certificate title, security interest continued perfected in Georgia for six months after first certificate of title was issued in Georgia, Maryland bank with perfected security interest in automobile took priority over Georgia automobile dealer where bank financed purchase of automobile, Maryland certificate of title was issued to purchaser stating that automobile was subject to bank's security interest, purchaser subsequently forged a satisfaction of lien and delivered fraudulent alteration to State of Maryland, purchaser moved to Georgia, applied to Georgia Motor Vehicle Department for certificate of title which was issued to him free from liens in reliance on fraudulently altered Maryland documents, and purchaser, using Georgia title certificate, then sold automobile to dealer. Where issue is one of security interest perfection in motor vehicle, UCC yields to Motor Vehicle Certificate of Title Act. Strother Ford, Inc. v. First Nat'l Bank, 132 Ga. App. 268, 208 S.E.2d 25 (1974).

Where creditor of New York lessor of heavy equipment, installed in New Jersey by New Jersey lessee, perfected security interest in equipment leases by New York filing did not perfect its interest in reversion in New Jersey where equipment was located, lessor's trustee in bankruptcy had priority with respect to equipment itself over creditor's unperfected security interest. In re Leasing Consultants, Inc., 351 F.

Supp. 1390 (E.D.N.Y. 1972), remanded, 486 F.2d 367 (2d Cir. N.Y. 1973).

Where credit corporation perfected its purchase money security interest in boat in Connecticut and New York, but never perfected any security interest in Florida after debtor removed boat to that state, and after boat had been in Florida for 10 months bank financed purchased of boat from debtor who had obtained certificate of title falsely stating boat was free of lien, bank's lien was superior to lien of credit corporation under UCC § 9-103(3). GECC v. Hollywood Bank & Trust Co., 263 So. 2d 593 (Fla. App. 1972).

Where truck owner's chief place of business was in Michigan, perfection of security interest lien in truck by filing in Michigan was sufficient to protect lien from any and all subsequent financial transactions involving truck and from interests of out-of-state third parties, including bona fide purchaser for value without notice at execution sale in Florida, despite secured party's failure to intervene in Florida court proceedings after its attorney promised to do so. Powell v. Whirlpool Emp. Fed. Credit Union, 42 Mich. App. 228, 201 N.W.2d 683 (1972).

Filing at debtor's chief place of business was required to perfect security interest in equipment, and where conditional sale contract covering farm tractors was never filed anywhere, judgment creditor who executed and levied against tractors had claim superior to that of assignee of conditional sale contract. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

41. Priority.

In action involving determination of priority between lien resulting from attachment in California of trousers produced in foreign countries and consigned to purchaser in North Carolina, and bank's security interest resulting from financing agreements executed and filed in North Carolina, any right of bank was subordinate to attachment lien, where, pursuant to UCC § 9-102, the "situs" rule for choice of law applied, and where, under California law, bank had not perfected its security interest at time trousers were sited in California and were attached. Joint Holdings & Trading Co. v. First Union Nat'l Bank, 50 Cal. App. 3d 159 (2d Dist. 1975).

Under Georgia statute providing that if security interest was perfected under law of jurisdiction where vehicle was when security interest attached, and (a) if name of holder of security interest was shown on existing certificate of title issued by that jurisdiction, his security interest continued perfected in Georgia, or (b) if name of holder of security interest was not shown on existing certificate title, security interest continued perfected in Georgia for six months after first certificate of title was issued in Georgia, Maryland bank with perfected security interest in automobile took priority over Georgia automobile dealer where bank financed purchase of automobile, Maryland certificate of title was issued to purchaser stating that automobile was subject to bank's security interest, purchaser subsequently forged a satisfaction of lien and delivered fraudulent alteration to State of Maryland, purchaser moved to Georgia, applied to Georgia Motor Vehicle Department for certificate of title which was issued to him free from liens in reliance on fraudulently altered Maryland documents, and purchaser, using Georgia title certificate, then sold automobile to dealer. Where issue is one of security interest perfection in motor vehicle, UCC yields to Motor Vehicle Certificate of Title Act. Strother Ford, Inc. v. First Nat'l Bank, 132 Ga. App. 268, 208 S.E.2d 25 (1974).

Under Mississippi UCC assignee of automobile conditional sales contract was not entitled to priority over trustee in bankruptcy, where assignee's security interest remained perfected for 4 months after automobile was brought into Mississippi from Alabama, at which time security interest expired since assignee did not comply with filing provisions of Code. In re Partain, 351 F. Supp. 750 (N.D. Miss. 1972).

Lien obtained through attachment execution on partnership interest, after defendant had allegedly assigned interest to his attorney as collateral for fees and costs, took priority over rights of attorney-assignee; partnership interest came within definition of "general intangible" under UCC § 9-106, security interest therein was clearly within scope of security interests governed by article 9 of code under UCC § 9-102, and, inasmuch as no financing statement was filed under UCC § 9-302, such security interest was unperfected and plaintiff's lien, obtained through attachment execution, took priority under UCC § 9-301 over rights of defendant's attorney as holder of unperfected security interest of which plaintiff had no knowledge. Med-Mar, Inc. v. Dilworth, 96 Montg. County L. Rep. 91 (Pa. 1972).

Federal statute determines the priority as between the conditional seller of an airplane and the seller of parts added to the airplane. International Atlas Servs., Inc. v. Twentieth Century Aircraft Co., 251 Cal. App. 2d 434 (2d Dist. 1967), cert. denied, 389 U.S. 1038, 88 S. Ct. 775, 19 L. Ed. 2d 827 (1968).

42. Remedies for conversion.

Although Article 9 of UCC contains no specific provision establishing cause of action against third party for conversion of property upon which another holds a security interest, that omission does not preclude or preempt another remedy; thus, in absence of facts creating waiver or release or showing acquiescence or consent on part of secured party to sale of property covered by security agreement, auctioneer who sold cattle subject to security interest was liable to secured party for conversion of cattle. Hills Bank & Trust Co. v. Arnold Cattle Co., 22 Ill. App. 3d 138, 316 N.E.2d 669 (3d Dist. 1974).

Federal law rather than state law would control an action based upon an alleged conversion by an auctioneer by sale at public auction of cattle against which the Farmers Home Administration had a recorded security agreement executed in its favor by the owner of the cattle. United States v. Sommerville, 324 F.2d 712 (3d Cir. Pa. 1963), cert. denied, 376 U.S. 909, 84 S. Ct. 663, 11 L. Ed. 2d 608 (1964).

43. Remedies; foreclosure and sale.

In action on two promissory notes secured by debtor's interest in leases of two vending machines, UCC § 9-501(1) entitled creditor to collect note without first seeking recourse against collateral, particularly where creditor did first reasonably try to repossess machines; third promissory note secured by note payable to debtor which was itself secured by fourth deed of trust on realty was also recoverable under UCC § 9-102(3) without first requiring creditor to foreclose trust deed. Bank of Cal. v. Leone, 37 Cal. App. 3d 444 (1st Dist. 1974).

Article 9 of Uniform Commercial Code applies only to creation of security interest in personal property or fixture and is not applicable to creation of real estate mortgage; thus, provisions of Uniform Commercial Code were not bar to action to foreclose mortgage. State Nat'l Bank v. Dick, 164 Conn. 523, 325 A.2d 235 (1973).

F. Decisions Under Former Statutes.

44. In general.

The trust receipt laws are construed strongly against those retaining titles under them. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

The trust receipts act proceeds on the theory that the entruster is entitled to protection only against honest insolvency of the trustee, and dishonest action of the trustee is a credit risk and bona fide purchasers are to be protected against the entruster who has taken that risk by entrusting. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

III. Under Former § 75-9-104.

45. In general.

Article 9 of Uniform Commercial Code does not apply to assignments made for collection purposes only. W.C. Fore Trucking Co. v. Biloxi Prestress Concrete, Inc., 98 F.3d 204 (5th Cir. 1996).

In creditor's action against trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

Uniform Commercial Code is totally inapplicable to nonpossessory liens and question of their priority in relation to secured interests must be determined by existing statutes and pre-code case law. Leger Mill Co. v. Kleen-Leen, Inc., 563 P.2d 132 (Okla. 1977) (interests of secured creditors were prior ro statutory "feedmen's" liens).

A detailed reading of this section indicates that all of the subsections deal with matters felt to be sufficiently covered by a statute of the United States or of the several states, or that they deal with special transactions which do not fit easily into the general commercial statute and which are adequately covered by existing law. In re King Furn. City, Inc., 240 F. Supp. 453 (E.D. Ark. 1965).

46. Security interest subject to federal statute: 9-104(a).

Article 9 of Uniform Commercial Code, which requires filing of financial statement to perfect security interest, applied to determination of whether unsecured debt assigned, for collection purposes only, to assignee holding secured debt arising from same transaction was secured, even though singular transaction of assignment for collection purposes was exempt from Article 9; transaction resulting in creation of security interest in debtor's inventory was transaction that was pivotal to court's decision as to whether there was perfected security interest in assigned debt. W.C. Fore Trucking Co. v. Biloxi Prestress Concrete, Inc., 98 F.3d 204 (5th Cir. 1996).

Federal law rather than state law would control an action based upon an alleged conversion by an auctioneer by sale at a public auction of cattle against which the Farmers Home Administration had a recorded security agreement executed in its favor by the owner of the cattle. United States v. Sommerville, 324 F.2d 712 (3d Cir. Pa. 1963), cert. denied, 376 U.S. 909, 84 S. Ct. 663, 11 L. Ed. 2d 608 (1964).

Exclusionary language of UCC § 9-104(a) applies only to extent that federal statute governs rights of parties to, and third parties affected by, transactions in particular types of property, and specifically leaves open possibility that Article 9 can be looked to for answer in event that federal statute contains no relevant provisions. Haynes v. GECC, 432 F. Supp. 763 (W.D. Va. 1977), aff'd, 582 F.2d 869 (4th Cir. Va. 1978) (stating that UCC had been adopted by both states, Pennsylvania and Virginia, that might be involved in case).

Ownership interest of buyer who bought airplane from recognized dealer in aircraft was superior to lien of defendant credit company which had loaned dealer money to purchase airplane, taken note for amount of such loan, executed security agreement whereby dealer pledged airplane and proceeds from its sale as security for payment of note, and recorded security agreement with aircraft registry office of Federal Aviation Administration pursuant to federal law (49 USCS § 1403), since (1) federal aircraft registration law, although providing that no interest in airplane could be valid in absence of federal recordation, was silent on issue of priorities among lien claimants and did not create affirmative priority of federally recorded interests as against rights declared by state law within meaning of UCC § 9-104(a); (2) defendant's security agreement, although recorded with federal aircraft registry office, also looked to

Uniform Commercial Code as means by which defendant could enforce its rights; (3) buyer was purchaser in ordinary course of business from one engaged in selling goods of that kind, and sale was expressly permitted by defendant's security agreement; and (4) under UCC § 9-307(1), buyer in ordinary course of business clearly prevails over holder of security interest created by seller, even though such security interest is perfected. Haynes v. GECC, 432 F. Supp. 763 (W.D. Va. 1977), aff'd, 582 F.2d 869 (4th Cir. Va. 1978) (stating that UCC had been adopted by both states, Pennsylvania and Virginia, that might be involved in case).

Under UCC §§ 9-307(1) and 9-104(a), a security interest in an airplane held as part of a dealer inventory, which interest was duly recorded with the F.A.A. as required by federal law (see 49 USCS § 1403), is not superior to the rights of a purchaser for value from the dealer without actual notice of a security interest. In such case, although congress, by providing a federal system for registration of conveyances and liens affecting title to aircraft, did preempt that field and render state recording statutes inapplicable to such title instruments, the federal statute did not remove from resolution under state law questions concerning the validity of such title documents, actual notice, good-faith-purchaser status, and similar matters. Bank of Hendersonville v. Red Baron Flying Club, Inc., 571 S.W.2d 152 (Tenn. Ct. App. 1977), cert. denied, 439 U.S. 1089, 99 S. Ct. 872, 59 L. Ed. 2d 56 (1972) (holding that rights of purchaser of airplane from dealer in ordinary course of business were superior to rights of holder of lien on moving stock of airplanes in dealer's possession).

Article 9 of UCC does not apply to statutory landlord's lien and, since landlord's statutory lien was not protected as security interest under UCC, it was not entitled to priority under § 6323(a) of Federal Tax Lien Act of 1966. On the other hand, contractual landlord's liens are not excluded from filing requirement of UCC and, therefore, landlord's contractual lien must have been properly filed to have priority over government's tax lien. United States (Treasury Dep't, IRS) v. Globe Corp., 113 Ariz. 44, 546 P.2d 11 (1976).

Transaction between local housing authority and United States whereby housing authority pursuant to its statutory powers granted to United States security interest prior to everyone else in world, including judgment creditor, was excluded from operative provisions of Uniform Commercial Code under § 9-104. Union Nat'l Bank v. First Merrick Constr. Corp., 81 Misc. 2d 658 (1975).

Transactions relating to creation or perfection of security interests, rather than to assignments of receivables for collection, remain subject to provisions of Article 9 of Uniform Commercial Code, absent other controlling provisions. W.C. Fore Trucking Co. v. Biloxi Prestress Concrete, Inc., 98 F.3d 204 (5th Cir. 1996).

47. Landlord's lien: 9-104(b).

Under former Maryland law controlling landlord's right to distrain goods for nonpayment of rent, the lien of a perfected security interest which was neither a conditional sales contract nor a purchase money mortgage was inferior to the landlord's lien upon property owned by and in the possession of the tenant, for the unqualified exclusion of landlord's liens from the UCC left the law with respect to them as it had been before. Universal C.I.T. Credit Corp. v. Congressional Motors, Inc., 246 Md. 380, 228 A.2d 463 (1967).

This section renders Code inapplicable to landlord's statutory lien. Universal C.I.T. Credit Corp. v. Congressional Motors, Inc., 246 Md. 380, 228 A.2d 463 (1967).

This section does not apply to a landlord's lien, and a landlord's right to distrain personal property for nonpayment of rent is governed by the Landlord and Tenant Act. Firestone Tire & Rubber Co. v. Dutton, 205 Pa. Super. 4, 205 A.2d 656 (1964).

The Uniform Commercial Code does not apply to a landlord's lien. In re Einhorn Bros., 272 F.2d 434 (3d Cir. Pa. 1959) (disapproved on other grounds Jordan v Hamlett (CA5 Ala) 312 F2d 121).

It seems highly questionable that a landlord's lien may come within § 9-310 as a lien for "services or materials" in the light of the distinction drawn between such liens and that of a landlord in this section, and the further fact that leasing of the premises does not enhance or preserve the value of the collateral situated thereon. In re Einhorn Bros., 171 F. Supp. 655 (E.D. Pa. 1959), aff'd, 272 F.2d 434 (3d Cir. Pa. 1959) (disapproved on other grounds Jordan v Hamlett (CA5 Ala) 312 F2d 121).

48. —Not excluded; created by contract.

Since only statutory landlord's liens are excluded by UCC § 9-104(b) from operation of Article 9 of Uniform Commercial Code, prior contractual landlord's lien in personal property of debtor, which was expressly provided for in debtor's lease of certain realty but which landlord did not perfect as security interest by filing of proper financing statement under Article 9, was not superior to bank's subsequent security interest in same property which bank perfected by filing of proper financing statements. Moreover, bank in such case was not precluded from asserting under UCC § 9-312(5)(a) priority of its subsequently perfected security interest by fact that at time it extended credit to debtor and perfected security interest in debtor's property, it had actual knowledge of landlord's prior unrecorded contractual lien on such property, since it had notified landlord about loan it proposed to make to debtor and also had requested landlord to subrogate his interest to such loan, and landlord at that time could have perfected his contractual lien in debtor's property by filing proper financing statement covering such property. Bank of N. Am. v. Kruger, 551 S.W.2d 63 (Tex. Civ. App. 1977), writ ref'd n.r.e., (July 13, 1977).

Court agreed with referee in bankruptcy that Code § 9-104(b) referred to liens created by statute and not to a lien created by contract. In re Leckie Freeburn Coal Co., 405 F.2d 1043, 6 U.C.C. Rep. Serv. 15 (6th Cir. Ky. 1969), cert. denied, 395 U.S. 960, 89 S. Ct. 2101, 23 L. Ed. 2d 746 (1969).

A "landlord's lien" as used in this section applies only to liens created by statute and it does not include liens created by contract. In re King Furn. City, Inc., 240 F. Supp. 453 (E.D. Ark. 1965).

A lien in favor of the landlord in a lease contract and stated to be in addition to the statutory lien is not excluded from the requirements of the Uniform Commercial Code. In re King Furn. City, Inc., 240 F. Supp. 453 (E.D. Ark. 1965).

49. —Priority over other liens.

Unless a landlord has expressly or impliedly waived the statutory landlord's lien, its rights are superior to all other interests, including those created by Chapter 9 of the Uniform Commercial Code. Planters Bank & Trust Co. v. Sklar, 555 So. 2d 1024 (Miss. 1990).

Since only statutory landlord's liens are excluded by UCC § 9-104(b) from operation of Article 9 of Uniform Commercial Code, prior contractual landlord's lien in personal property of debtor, which was expressly provided for in debtor's lease of certain realty but which landlord did not perfect as security interest by filing of proper financing statement under Article 9, was not superior to bank's subsequent security interest in same property which bank perfected by filing of proper financing statements. Moreover, bank in such case was not precluded from asserting under UCC § 9-312(5)(a) priority of its subsequently perfected security interest by fact that at time it extended credit to debtor and perfected security interest in debtor's property, it had actual knowledge of landlord's prior unrecorded contractual lien on such property, since it had notified landlord about loan it proposed to make to debtor and also had requested landlord to subrogate his interest to such loan, and landlord at that time could have perfected his contractual lien in debtor's property by filing proper financing statement covering such property. Bank of N. Am. v. Kruger, 551 S.W.2d 63 (Tex. Civ. App. 1977), writ ref'd n.r.e., (July 13, 1977).

Article 9 of UCC does not apply to statutory landlord's lien and, since landlord's statutory lien was not protected as security interest under UCC, it was not entitled to priority under § 6323(a) of Federal Tax Lien Act of 1966. On the other hand, contractual landlord's liens are not excluded from filing requirement of UCC and, therefore, landlord's contractual lien must have been properly filed to have priority over government's tax lien.

United States (Treasury Dep't, IRS) v. Globe Corp., 113 Ariz. 44, 546 P.2d 11 (1976).

Where debtor and lender bank entered into a security agreement granting the bank a security interest in debtor's merchandise inventory which the bank perfected by filing, and thereafter the Commonwealth filed unemployment compensation claims against the debtor, thereby fixing liens upon all of debtor's real and personal property, and landlord levied a distraint for rent against the debtor's property, and the bank instituted an action of replevin with bond of debtor's goods subject to bank's security interest, and on same day debtor filed a petition for arrangement which was subsequently converted into bankruptcy proceeding, and bankruptcy court restrained execution of writ of replevin, the order of distribution would be (1) costs of administration, (2) wages, (3) liens of Commonwealth, (4) lien of landlord, and (5) bank's lien. In re Einhorn Bros., 272 F.2d 434 (3d Cir. Pa. 1959).

Creditor's security interest in the bankrupt's merchandise inventories was inferior to landlord's lien since statute giving landlord a superior lien was left undisturbed by enactment of the Uniform Commercial Code. In re Einhorn Bros., 171 F. Supp. 655 (E.D. Pa. 1959), aff'd, 272 F.2d 434 (3d Cir. Pa. 1959).

50. Statutory lien for services or materials: 9-104(c).

In action between bank which held prior federally recorded security interest in airplane and bailee which held possessory lien for storage charges, under UCC §§ 9-104(c) and 9-310, possessory lien had priority over bank's interest. Industrial Nat'l Bank v. Butler Aviation Int'l, Inc., 370 F. Supp. 1012 (E.D.N.Y. 1974).

51. —Not excluded.

The transaction did not come within the exclusion provision of the instant section where a furniture dealer sold and delivered under what he described as a "conditional sales contract note" carpeting and furniture to a nonprofit corporation. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

52. Transfer of claim for wages, salary or other compensation: 9-104(d).

With respect to the assignability of wages of government employees, it has been pointed out that even the Code "which provides a high degree of assignability, specifically states that it does not apply '(d) to a transfer of a claim for wages, salary, or other compensation of an employee.' " Opinion of the Justices, 1961, 103 N.H. 381, 173 A.2d 578

53. —Not excluded.

In interpleader proceeding to establish priority of claims to money due and payable to debtor under general agency contract, UCC § 9-104 exemption from coverage of article 9 of claims for wages, salary, or other compensation of employee was inapplicable where debtor was independent contractor; creditor who had obtained perfected security interest in debtor's commissions had first priority against funds, while rights of creditor who had failed to perfect its security interest as required by UCC § 9-302 were subordinated to rights of those who qualified as lien creditors under UCC § 9-301; burden of proof as to whether lien creditors had knowledge of unperfected security interest rested on holder of unperfected security interest. Massachusetts Mut. Life Ins. Co. v. Central Penn Nat'l Bank, 372 F. Supp. 1027 (E.D. Pa. 1974), aff'd sub nom. In re Franklin Nat'l Bank, 510 F.2d 969 (3d Cir. Pa. 1975), aff'd, 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Mercantile Financial Corp., 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Miller, 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Mokrin, 510 F.2d 970 (3rd Cir. Pa. 1975).

54. Sale or assignment of accounts, contract rights, or chattel paper: 9-104(f).

Where (1) general contractor retained sum due under contract with subcontractor on ground that subcontractor's work was poorly performed, and (2) subcontractor then assigned such sum to creditor, to whom subcontractor owed preexisting debt, without general contractor's written consent, although such consent was required by contract between general contractor and subcontractor, court held that since assignment did not involve sale within the meaning of UCC § 2-102, prohibition against assignments in contract between general contractor and subcontractor was not rendered invalid by UCC Article 2 on sales or by any other provision of Uniform Commercial Code, including UCC § 9-104(f) which deals with inapplicability of Article 9 to assignment of accounts or contract rights for collection only. Frazier v. National Elec. Supply Co., 362 So. 2d 609 (Miss. 1978), overruled on other grounds, Mississippi Bank v. Nickles & Wells Constr. Co., 421 So. 2d 1056 (Miss. 1982).

"Letter of Assignment" sent by general contractor to bank, which (1) informed bank that specified sum due from general contractor to subcontractor under specified subcontract would be paid to subcontractor and (2) was given to bank to induce it to lend funds to subcontractor to complete its subcontract with general contractor, constituted independent contract between general contractor and bank and provided additional protection to bank for making such loan. Since such letter was an independent contract instead of a simple assignment, it was not subject to provisions of UCC Art 9 (see UCC § 9-104(f)). American Bank of Commerce v. M & G Bldrs., Ltd., 92 N.M. 250, 586 P.2d 1079 (1978).

To have priority over federal tax lien, assignee of royalty rights in showing of movie should have protected interest by filing of financing statement, unless assignee could establish that assignment involved insignificant portion of contract rights within the meaning of UCC § 9-302(1)(e). Consolidated Film Indus. v. United States, 547 F.2d 533 (10th Cir. Utah 1977).

Transaction between export-import company and sales corporation whereby export-import company undertook to perform contract between sales corporation and buyer of shoes to import and deliver shoes to buyer, was assignment of contract rights by sales corporation to export-import company within meaning of UCC § 9-104(f) and, thus, was not secured transaction with scope of Article 9. American E. India Corp. v. Ideal Shoe Co., 400 F. Supp. 141 (E.D. Pa. 1975), aff'd, 568 F.2d 768 (3d Cir. Pa. 1978).

Exclusion from Article 9 coverage of sale of accounts, contract rights or chattel paper as part of "sale of the business out of which they arose" was inapplicable where evidence showed that debtor had been charged $25 per month rent after debtor had assigned its accounts and moved to premises of assignee and went out of business shortly after assignment agreement. Vittert Constr. & Inv. Co. v. Wall Covering Contractors, 473 S.W.2d 799 (Mo. Ct. App. 1971).

55. —Not excluded.

Creditor could not avoid UCC filing requirements by arguing under UCC § 9-104(6) that transaction was "assignment ... for the purpose of collection only" where creditor did not run collection agency but was rather seeking to secure loan to debtor. York v. Ottusch, 412 F. Supp. 819 (W.D. Wis. 1976).

Cable television installation agreements used as collateral to secure payment of promissory notes due former limited partner were "general intangibles" under UCC § 9-102(1)(a), and were not affected by UCC § 9-104(f), exclusion of "contract rights" from perfecting of valid security interests, where none of rights under security transaction were for payment of money and it was not contested that parties intended to create security interests. Dynair Elecs. Inc. v. Video Cable, Inc., 55 Cal. App. 3d 11 (4th Dist. 1976).

Exclusion of § 9-104(f) relates to assignments of non-commercial nature such as those to collection agency for sole purpose of facilitating collection of debt, and does not exclude present action to determine validity of assignments of accounts receivable made for a financing purpose. Bramble Transp., Inc. v. Sam Senter Sales, Inc., 294 A.2d 97 (Del. Super. 1971), aff'd, 294 A.2d 104 (Del. 1972).

Assignee of debtor's accounts could not invoke exceptions to filing requirements of UCC § 9-104(f) since monthly rental charged to debtor and fact that he went out of business shortly after assignment negated concept of "sale of a business" and since, if assignment was for "purpose of collection only", then assignee had no beneficial interests higher than that of assignor who admittedly was indebted on the judgment and tax lien. Vittert Constr. & Inv. Co. v. Wall Covering Contractors, 473 S.W.2d 799 (Mo. Ct. App. 1971).

56. Transfer of interest in or claim under insurance policy: 9-104(g).

Secured lending bank could not recover proceeds of auto insurance policy upon destruction of collateral by fire where bank was not named as loss payee, and where, prior to 1977 revision of UCC, insurance claims were excluded under UCC § 9-104(g). First Nat'l Bank v. Merchant's Mut. Ins. Co., 49 N.Y.2d 725, 402 N.E.2d 1168 (1980).

The claim which an insurance company has against the recovery which its insured may obtain, after having entered into a loan receipt transaction with him, is not such an interest as can be protected by filing under the Code. Arkwright Mut. Ins. Co. v. Bargain City, U.S.A., Inc., 373 F.2d 701 (3d Cir. Pa. 1967), cert. denied, 389 U.S. 825, 88 S. Ct. 63, 19 L. Ed. 2d 79 (1967).

The adoption of the exclusion set forth in subdiv. (g) indicates a legislative recognition that the right to insurance moneys is a matter of contract and does not run with the goods. Universal C.I.T. Credit Corp. v. Prudential Inv. Corp., 101 R.I. 287, 222 A.2d 571 (1966).

57. —Not excluded.

Insurance payments made because of casualty loss of collateral are "proceeds" pursuant to provision of UCC § 9-306(1), effective July, 1978, which includes "insurance payable by reason of loss or damage to collateral.except to extent it is payable to a person other than a party to the security agreement"; where automobile accident occurred in 1975, the above language of UCC § 9-306(1) is not relevant, and UCC § 9-104(g) which states that UCC Art 9 does not apply to a transfer of an interest or claim in or under any insurance policy is applicable. First Nat'l Bank v. Merchant's Mut. Ins. Co., 49 N.Y.2d 725, 402 N.E.2d 1168 (1980).

Under security agreement granting creditor security interest in inventory and equipment and further providing that debtor would maintain insurance policy on collateral with creditor as payee, and providing that security interest was to continue in proceeds from inventory, creditor had valid security interest in proceeds of fire insurance policy upon destruction of inventory under UCC § 9-306(1), where party's clear intention was to give secured party benefit of insurance proceeds; UCC § 9-104(g), providing that Article Nine does not apply "to a transfer of an interest or claim in or under any policy of insurance" is applicable only in situations where parties to security agreement attempt to create direct security interest in insurance policy by making policy itself immediate collateral securing transaction, and not to situations where security agreement creates both direct security interest in inventory and/or equipment and requires debtor to provide his creditor with further protection by insuring collateral. PPG Indus., Inc. v. Hartford Fire Ins. Co., 531 F.2d 58 (2d Cir. N.Y. 1976).

58. Right represented by judgment: 9-104(h).

UCC § 9-104(j) provides that UCC Art 9 does not apply to creation or transfer of interest in real estate, including lease or rents thereunder. Thus, in action by assignee of right to receive royalties and rent payments arising from lease of rock quarry against judgment lien creditors of assignor of such right and garnishees in possession of such rents and royalties, rents and royalties in garnishees' possession were not subject to UCC Art 9, and judgment lien creditors were not prohibited by UCC § 9-301 from taking priority to such funds over assignee who had unperfected security interest in funds, even though judgment lien creditors had knowledge of assignee's security interest at time they became lien creditors. Union Livestock Yards, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 552 S.W.2d 392 (Tenn. Ct. App. 1976).

Filing was not necessary to perfect assignment of judgment under UCC since § 9-104(h) specifically excludes right represented by judgment from Article 9 of UCC. Law Research Serv., Inc. v. Martin Lutz Appellate Printers, Inc., 498 F.2d 836 (2d Cir. N.Y. 1974).

59. Right of set-off: 9-104(i).

UCC § 9-104(i), which provides that Article 9 does not apply to any right of setoff, does not mean that a general creditor can abrogate a perfected security interest simply by having a right to, and an opportunity for, a setoff. All that UCC § 9-104(i) means is that a right of setoff may exist in a creditor who does not have a security interest. Citizens Nat'l Bank v. Mid-States Dev. Co., 177 Ind. App. 548, 380 N.E.2d 1243, 3 A.L.R.4th 987 (1978).

While the language of UCC § 9-104(i), providing that UCC Article 9 does not apply to any right of setoff, is plain enough, the conclusion that this section removes from the operation of the Uniform Commercial Code any controversy between a setting-off bank and a secured party is not warranted by the narrow purpose that this section is intended to serve. Citizens Nat'l Bank v. Mid-States Dev. Co., 177 Ind. App. 548, 380 N.E.2d 1243, 3 A.L.R.4th 987 (1978).

UCC § 9-104(1) cannot mean that general creditor may abrogate perfected security interest by simply having a right to and opportunity for a set-off; all this section means is that a right of set-off may exist in a creditor who does not have a security interest. Associates Disct. Corp. v. Fidelity Union Trust Co., 111 N.J. Super. 353, 268 A.2d 330 (L. Div. 1970).

60. Transfer of interest in or lien upon real estate; mortgages: 9-104(j).

In creditor's action against trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

Assignment of a real estate mortgage, which secures a promissory note that is included in such assignment, as collateral for a bank loan is not a secured transaction under UCC Art 9 because it is specifically excluded by UCC § 9-104(j). Rucker v. State Exch. Bank, 355 So. 2d 171 (Fla. App. 1978).

Mortgage or assignment of oil and gas leasehold for security purposes was treated as real estate mortgage and therefore outside scope of Article 9 of Uniform Commercial Code. Ingram v. Ingram, 214 Kan. 415, 521 P.2d 254 (1974).

Real estate mortgages are not to be viewed as security agreements merely because they happen to contain provisions relating to attached personalty. In re Royer's Bakery, Inc., 58 Lanc. L. Rev. 405 (Pa 1963).

61. Transfer of interest in or lien upon real estate; leases and rents: 9-104(j).

Although the district court's application of the Uniform Commercial Code was correct with respect to issues pertaining to the Small Business Administration's auction of chattel pursuant to the guaranty agreement between the SBA and appellants, which provided that the SBA may sell the secured property on default subject only that "such powers to be exercised only to the extent permitted by law", Mississippi real property law, § 89-1-55, governed the propriety of the sale of borrower's leasehold, rather than § 75-9-104(j), which specifically excludes from coverage transfers of real property, including lease-holds. United States v. Irby, 618 F.2d 352 (5th Cir. 1980).

UCC § 9-104(j) provides that UCC Art 9 does not apply to creation or transfer of interest in real estate, including lease or rents thereunder. Thus, in action by assignee of right to receive royalties and rent payments arising from lease of rock quarry against judgment lien creditors of assignor of such right and garnishees in possession of such rents and royalties, rents and royalties in garnishees' possession were not subject to UCC Art 9, and judgment lien creditors were not prohibited by UCC § 9-301 from taking priority to such funds over assignee who had unperfected security interest in funds, even though judgment lien creditors had knowledge of assignee's security interest at time they became lien creditors. Union Livestock Yards, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 552 S.W.2d 392 (Tenn. Ct. App. 1976).

Lender who took security interest in lessor-borrower's lease and in rents thereunder as security for loan did not have to comply with filing provisions of Article 9 to perfect its interest against attack by receiver in bankruptcy; drafters who wrote Article 9 and legislators who enacted it into law intended § 9-104(j) to be interpreted sufficiently broadly to exclude assignment of lease and rents thereunder from operation of Article 9. In re Bristol Assocs., 505 F.2d 1056 (3d Cir. Pa. 1974).

Article 9 of UCC does not apply to real estate lease or rents thereunder. Marcelletti & Son Constr. Co. v. Millcreek Tp. Sewer Auth., 313 F. Supp. 920 (W.D. Pa. 1970).

62. —Not excluded.

UCC § 9-104(j), excluding from operation of Article 9 "the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder," did not apply to assignment of accounts receivable of motel or hotel business to secure payments due under lease; hence, mere fact that lease and lease amendment, which assigned to lessor in event of default rents, issues, income and profits arising from operation of motel, were recorded as instruments affecting real estate did not affect priority of secured party's security interest in accounts receivable. United States v. PS Hotel Corp., 404 F. Supp. 1188 (E.D. Mo. 1975), aff'd, 527 F.2d 500 (8th Cir. Mo. 1975).

63. Transfer of interest in deposit account or tort claim: 9-104(k).

The fact that UCC § 9-104(k) prevents the creation of a security interest in a bank deposit account does not affect the validity of an assignment of the account for other purposes. Willow City Farmers Elevator v. Vogel, Vogel, Brantner & Kelly, 268 N.W.2d 762 (N.D. 1978).

Assignment of passbook savings account was governed by common law rather than Uniform Commercial Code, inasmuch as UCC § 9-104(1) specifically exempts transfer of interest in deposit account from its coverage and under UCC § 9-105(1)(e), deposit account includes passbook. Iser Elec. Co. v. Ingran Constr. Co., 48 Ill. App. 3d 110, 362 N.E.2d 771 (2d Dist. 1977).

Missouri courts would not permit defendant bank to retain amount debited outside usual course of business and thereby defeat security interest of plaintiff in identifiable proceeds of sale of 6 automobiles, where evidence indicated that debtor asked bank to debit his account for amount owed to bank and refused to write bank check for amount indicating that he wished to keep plaintiff from collecting on previously issued checks, and debiting transaction transpired after close of bank's business. Universal C.I.T. Credit Corp. v. Farmers Bank, 358 F. Supp. 317 (E.D. Mo. 1973).

Common-law pledge is given recognition by UCC § 9-104 with respect to any deposit, savings, passbook or like account maintained with bank, savings and loan association, credit union or like organization, and lien of pledgee is perfected by delivery of such intangibles by pledgor to pledgee. Walton v. Piqua State Bank, 204 Kan. 741, 466 P.2d 316 (1970).

64. —Not excluded; certificates of deposit.

Where (1) debtor at time it borrowed $250,000 from bank purchased $13,000 certificate of deposit which was nonnegotiable and nonassignable unless assignment was consented to and recorded on bank's books, (2) bank's customer contract with debtor authorized it to apply debtor's account, whether savings or certificate of deposit, to any indebtedness due bank from debtor, (3) debtor without bank's consent or knowledge assigned certificate to indemnity company to provide collateral for bond that debtor purchased from such company, (4) indemnity company thereafter sent certificate to bank with request for payment, and (5) bank, which had not changed its position in reliance on such certificate, thereupon set off funds represented by certificate against debt owed by debtor and demanded that balance of debt be paid, federal court in absence of clearly controlling precedents in decisions of Florida Supreme Court would certify following questions to such court: (1) Was assignment of certificate of deposit as security for purpose of bond a transfer that was entitled to secured-transaction treatment under Florida UCC Art 9? (2) Was such transaction excluded from coverage under Florida UCC Art 9 by Florida UCC § 9-104(9) (Official UCC § 9-104(i)) or Florida UCC § 9-104(11) (Official UCC § 9-104(k))? (3) Did Florida UCC § 9-318(4) (Official UCC § 9-318(4)) invalidate prohibition against assignment of certificate without bank's consent and notation of assignment on bank's books? (4) Was bank's asserted right of setoff established by Florida UCC § 9-318(1) (Official UCC § 9-318(1))? Bornstein v. Citizens Nat'l Bank, 564 F.2d 721 (5th Cir. Fla. 1977).

Certificates of deposit are instruments in which a security interest may be perfected and are not excluded from coverage under Article 9 by UCC § 9-104 which provides that Article 9 does not apply to transfer of "any deposit." Southview Corp. v. Kleberg First Nat'l Bank, 512 S.W.2d 817 (Tex. Civ. App. 1974).

65. Miscellaneous transactions.

Mississippi Motor Vehicle and Manufactured Housing Title Law did not apply to a dispute regarding the payment of several loans secured by trucks because the Uniform Commercial Code's exclusions under former Miss. Code Ann. § 75-9-104(c) (now Miss. Code Ann. § 75-9-109(d)(2)) did not cover automobiles. Trustmark Nat'l Bank v. Barnard, 930 So. 2d 1281 (Miss. Ct. App. 2006).

This section, excluding transactions from coverage when governmental agency is debtor or borrower, does not apply when governmental agency is secured creditor. Peoples Bank & Trust Co. v. Applewhite (In re 20th Century Enters., Inc.), 152 B.R. 119 (Bankr. N.D. Miss. 1992).

Surety claiming under terms of performance bond application was not entitled to equitable lien upon proceeds from sale of contractor's personal property, and did not have contract right but only security interest which it was required to file and perfect. Aetna Cas. & Sur. Co. v. J.F. Brunken & Son, 357 F. Supp. 290 (D.S.D. 1973).

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of statute respecting sale, assignment, or transfer of retail instalment contracts. 10 A.L.R.2d 447.

Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 A.L.R.2d 883.

Bill of sale, absolute on its face, as a chattel mortgage. 33 A.L.R.2d 364.

Lease of realty for term of years as subject of chattel mortgage. 33 A.L.R.2d 1277.

Necessity that mortgage covering oil and gas lease be recorded as real-estate mortgage, and/or filed or recorded as chattel mortgage. 34 A.L.R.2d 902.

Effectiveness, as pledge, of transfer of nonnegotiable instruments which represent obligation. 53 A.L.R.2d 1396.

Liability of pawnbroker or pledgee for theft by third person of pawned or pledged property. 68 A.L.R.2d 1259.

Validity of chattel mortgage on stock of goods which mortgagor has right to sell, where mortgagee takes possession of goods before third person's rights attack. 71 A.L.R.2d 1416.

Relative rights as between assignee of conditional seller and a subsequent buyer from the conditional seller after repossession or the like. 72 A.L.R.2d 342.

Priority as between seller or conditional seller of personalty and claimant under after-acquired property clause of mortgage or other instrument. 86 A.L.R.2d 1152.

Secured transactions: priority as between statutory landlord's lien and security interest perfected in accordance with Uniform Commercial Code. 99 A.L.R.3d 1006.

Effect of UCC Article 9 upon conflict, as to funds in debtor's bank account, between secured creditor and bank claiming right of setoff. 3 A.L.R.4th 998.

Security interests in liquor licenses. 56 A.L.R.4th 1131.

Applicability of Article 9 of Uniform Commercial Code to assignment of rights under real-estate sales contract, lease agreement, or mortgage as collateral for separate transaction. 76 A.L.R.4th 765.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 10 et seq., 34.

6 Am. Jur. 2d, Attachment and Garnishment § 113.

15A Am. Jur. 2d, Commercial Code § 11.

68A Am. Jur. 2d, Secured Transactions §§ 4, 91, 95, 100 et seq.

68A Am. Jur. 2d, Secured Transactions §§ 210 through 215.

Applicability; excluded transactions, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:11, 9:21-9:37.

5A Am. Jur. Pl & Pr Forms (Rev), Chattel Mortgages, Forms 1 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:1 et seq. (applicability).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 - Secured Transactions, § 253:1660 (excluded transactions).

Law Reviews. The effect of bankruptcy and encumbrances on mineral interests in Mississippi, 53 Miss. L. J. 551, December, 1983.

1983 Mississippi Supreme Court Review; Article 9 priority provisions and right of set-off. 54 Miss. L. J. 105, March, 1984.

Harvey, Article 9's Exclusion of Consensual Landlord's Liens: King Furniture City Revisited. 16 UCC L. J. 360, Spring, 1984.

§ 75-9-110. Security interests arising under Article 2 or 2A.

A security interest arising under Section 75-2-401, 75-2-505, 75-2-711(3), or 75-2A-508(5) is subject to this article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if Section 75-9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

SOURCES: Former 1972 Code § 75-9-110 [Codes, 1942, § 41A:9-110; Laws, 1966, ch. 316, § 9-110] is now found in comparable provisions enacted at § 75-9-108 by Laws, 2001, ch. 495, § 1. Present § 75-9-110 derived from former 1972 Code § 75-9-113 [Codes, 1942, § 41A:9-113; Laws, 1966, ch. 316, § 9-113; Laws, 1994, ch. 445, § 4] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Motor vehicle sales finance law, see § 63-19-1 et seq.

Reservation on security on passing of title to goods, see § 75-2-401.

Identification whereby buyer obtains special property and insurable interest in goods, see § 75-2-501.

Seller's shipment under reservation, see § 75-2-505.
Rights of financing agency on sale of goods, see § 75-2-506.
Seller's rights and remedies, see § 75-2-702 et seq.
Seller's stoppage of delivery in transit or otherwise, see § 75-2-705.
Seller's resale including contract for resale, see § 75-2-706.
"Person in the position of a seller," see § 75-2-707.
Buyer's security interest in rejected goods, see § 75-2-711.
Collecting bank's security interest, see § 75-4-208.
Scope of this chapter, see § 75-9-109.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-113.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-113.

6. In general.

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978).

Retention of title to fork lift gave seller no right as against secured party with perfected security interest in fork lift where debtor had possession of fork lift; under UCC § 1-201(37) retention of title by seller was limited in effect to reservation of security interest and under UCC § 9-113 such security interest was subject to provisions of Article 9, except to extent that debtor did not have possession of goods, but, since debtor did acquire possession, seller would have been required to execute written security agreement to render its security interest enforceable even as against debtor under UCC § 90203. Nasco Equip. Co. v. Mason, 291 N.C. 145, 229 S.E.2d 278 (1976).

RESEARCH REFERENCES

ALR. Bill of sale, absolute on its face, as a chattel mortgage. 33 A.L.R.2d 364.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 138.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:184 (lien of attaching creditor of goods in buyer's possession superior to lien of seller where security interest not perfected).

Part 2.

Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement.

Subpart 1. Effectiveness and Attachment....75-9-201
Subpart 2. Rights and Duties....75-9-207

Editor's Note — Many of the notes found under this part originated with the prior version of Chapter 9 which was revised in 2001. They have been moved to their current location at the direction of Codification Counsel. Some of the sections of the Uniform Commercial Code referenced in case notes under "Judicial Decisions" were current when the cases were decided but may have been revised or repealed since then. Cases decided under former law are clearly identified.

Subpart 1.

Effectiveness and Attachment.

Sec.
75-9-201. General effectiveness of security agreement.
75-9-202. Title to collateral immaterial.
75-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.
75-9-204. After-acquired property; future advances.
75-9-205. Use or disposition of collateral permissible.
75-9-206. Security interest arising in purchase or delivery of financial asset.

§ 75-9-201. General effectiveness of security agreement.

(a) Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers and to Sections 75-67-101 through 75-67-135, Sections 75-67-201 through 75-67-243, Sections 75-67-1 through 75-67-39, Sections 63-19-1 through 63-19-55 and to any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute or regulation of this state.

(c) In case of conflict between this article and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) This article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute or regulation described in subsection (b); or

(2) Extend the application of the rule of law, statute or regulation to a transaction not otherwise subject to it.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — Security interests under motor vehicle titles law, see § 63-21-1 et seq.

Variance of provisions of this Code by agreement, see § 75-1-302.
Protection of buyers of goods, see § 75-9-307.
Priorities as to conflicting security interests, see § 75-9-312.
Interest and usury, see § 75-17-1 et seq.
Personal property loans, see § 75-67-1 et seq.
Small loan regulations, see § 75-67-101 et seq.
Small loan privilege tax, see § 75-67-201 et seq.
Payment extinguishing mortgage, see § 89-1-49.

JUDICIAL DECISIONS

I. Under Current Law.

1. [Reserved for future use.]
2. Security devices.

3.-5. [Reserved for future use].

II. Under Former § 75-9-201.

6. In general.
7. Security devices.
8. Construction with other laws.
9. —Title acts.
10. After-acquired property.
11. Priority.
12. —Creditors.
13. —Tax liens.
14. Defective security interests.
15. —Failure to perfect.

III. Under Former § 75-9-203(4).

16. In general.
17. Construction with other laws.
18. —With other sections.

I. Under Current Law.

1. [Reserved for future use.]

2. Security devices.

Bank had a valid security interest in a piece of equipment under former Miss. Code Ann. 75-9-201 because the security agreement defined the term "property" as all property that was currently or later became attached to, a part of, or resulted from the described property. Thus, even though the equipment had two implements attached, it was still a piece of secured collateral. Cmty. Bank v. Courtney, — So. 2d —, 2004 Miss. LEXIS 656 (Miss. June 10, 2004), opinion withdrawn by, substituted opinion at, remanded by 884 So. 2d 767, 2004 Miss. LEXIS 1321 (Miss. 2004).

3.-5. [Reserved for future use].

II. Under Former § 75-9-201.

6. In general.

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right of set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

Under UCC, parties to security agreement were free to decide who should have right to possession of collateral. American Honda Motor Co. v. United States, 363 F. Supp. 988 (S.D.N.Y. 1973).

7. Security devices.

Lease of restaurant equipment did not constitute security agreement and, hence, guarantors of lessee's performance of terms of lease were not entitled to notice required by UCC § 9-504(3) where leased equipment was sold at private sale after lessee failed to pay rent and after demand for payment from guarantors had been ignored. Diaz v. Goodwin Bros. Leasing, Inc., 511 S.W.2d 680 (Ky. 1974).

A conditional sales contract is a valid security agreement and creates a security interest analogous to that of a chattel mortgage, and where it is executed prior to the date when assessment, notice, and demand were made upon the conditional purchaser for payment of federal taxes, the interest of a conditional vendor takes priority over the tax assessment, and as between the vendor and the United States it is immaterial that the sales contract was not recorded until a date subsequent to the tax assessment and demand. United States v. Lebanon Woolen Mills Corp., 241 F. Supp. 393 (D.N.H. 1964).

8. Construction with other laws.

The Arkansas Usury Law governed the enforceability of a conditional sales contract executed in Arkansas in connection with a purchase made in that state and providing that payments under the contract were to be made at the seller's Arkansas office, and the law of Tennessee under which the contract would not have been usurious did not govern in the absence of an agreement between the parties to that effect, even though the contract was assigned to a Tennessee bank and that at the time the transaction was entered into the vendee was also a Tennessee resident. Lyles v. Union Planters Nat'l Bank, 239 Ark. 738, 393 S.W.2d 867 (1965).

The fact that Uniform Commercial Code was enacted subsequent to the Motor Vehicle Sales Finance Act of 1947 (69 Purdon's Pennsylvania Statutes §§ 601 et seq.), and there is a general repealing clause in the Code, is not necessarily conclusive on the issue of legislative intent, and, in view of § 9-201, providing that nothing in the article validates any charge or practice illegal under any rule of law or regulation governing instalment sales, and § 9-203, providing that transaction although subject to the article, must also comply with the Motor Vehicle Sales Finance Act, the legislature did not intend to repeal the earlier law. First Nat'l Bank v. Horwatt, 192 Pa. Super. 581, 162 A.2d 60 (1960).

9. —Title acts.

As between the parties, the fact that the creditors' interest is not noted on the title certificate is immaterial since as between the creditor and the debtor the creditor's security interest attaches immediately upon the execution of a written agreement that there be such an interest, which agreement describes the collateral, bears the debtor's signature, and does not include any provision expressly postponing the attaching of the security interest. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

The security interest of a seller under an installment contract for the sale of a truck was perfected by a notation of the encumbrance on the certificate of title to the truck, pursuant to statute, and the perfected security interest was effective against the insolvent buyer's receivers in equity. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

10. After-acquired property.

Provision in two security agreements, executed to secure payment of two notes evidencing loans made by bank to debtor, that collateral secured all existing and subsequently incurred indebtedness of debtor to bank was valid and effective under UCC § 9-201 and § 9-204(5) to continue bank's lien on collateral, even after debtor paid the two notes, where debtor had incurred other indebtedness to bank which remained unpaid. National Bank v. Shaad, 60 A.D.2d 774 (4th Dep't 1977).

Where a security agreement gave the lender a security interest in the borrower's inventory, including all raw materials, work in progress, finished goods, and all similar goods thereafter acquired, including their product and proceeds, the lender's security interest attached not only to raw materials sold to the borrower by a supplier who failed to retain and perfect a purchase-money security interest therein, but the lender's interest also attached to the borrower's finished products which supplier had received in payment; and the lender's rights could not be defeated by application of the equitable doctrine of unjust enrichment. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

11. Priority.

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right to set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

Since the effect of UCC § 9-201 is to give the secured party, on the debtor's default, priority over "anyone, anywhere, anyhow," except as otherwise provided by the remaining code priority rules, and since there is no specific priority rule that deals with the conflict between the holder of a security interest in proceeds from the disposition of the debtor's collateral and a bank's setoff right against funds in the debtor's bank account which represent such proceeds, the bank's claim of setoff, where the bank is an unsecured general creditor, is subordinated to the secured party's security interest. Citizens Nat'l Bank v. Mid-States Dev. Co., 177 Ind. App. 548, 380 N.E.2d 1243, 3 A.L.R.4th 987 (1978).

Insurance company which, as part of claim settlement, obtained title to car covered by security interest, was liable to secured party for unpaid balance under UCC § 9-201, even though car was total loss and had no value; insurance company was not buyer of automobiles in ordinary course of business under UCC § 9-307. GMAC v. Allstate Ins. Co., 77 Misc. 2d 849 (1974).

12. —Creditors.

UCC § 9-201 gives the holder of even an unperfected security interest priority over the general creditors of the debtor as to the property secured. Intertherm, Inc. v. Olympic Homes Sys., 569 S.W.2d 467 (Tenn. Ct. App. 1978).

Contractor had rights in funds retained by city under construction contract, notwithstanding contract conditioned payment of retainage upon contractor's first paying all subcontractors and materialmen and contractor had not made all such payments; thus bank's security agreements were sufficient to give it security interest in retained funds, which had been assigned to bank, superior to that of general creditors. Corpus Christi Bank & Trust v. Smith, 525 S.W.2d 501 (Tex. 1975).

In dispute over funds in segregated bank account into which bankrupt debtor deposited cash proceeds from after acquired inventory accounts receivable, contract rights, and general intangibles relating to production and sale of microwave ovens, secured creditor prevailed over judgment creditor where security agreement was effective between parties and against creditors under UCC § 9-201 and moneys in account constituted identifiable noncommingled cash proceeds under UCC § 9-306(4). Salzer v. Victor Lynn Corp., 114 N.H. 29, 315 A.2d 185 (1974).

13. —Tax liens.

Where subcontractor assigned its right to payment under contract with contractor, where right to payment was in existence at time of assignment by virtue of subcontractor's performance under contract, and where assignee's right to receive payment under contract could not be disrupted under state law by lien of judgment against subcontractor, assignee's interest was perfected under federal law prior to recording of government's tax liens and, therefore, had priority over those liens with respect to fund in question, notwithstanding assignee did not file its assignment as required by UCC. Major Elec. Supplies, Inc. v. J.W. Pettit Co., 427 F. Supp. 752 (M.D. Fla. 1977).

An earlier perfected chattel mortgage lien upon property not owned by the chattel mortgage debtor but owned by the taxpayer who had represented to the creditor that the debtor owned the property has priority over a perfected tax lien of the government. Avco Delta Corp. Canada v. United States, 459 F.2d 436 (7th Cir. Ill. 1972).

A purchase money security interest in the assets and a state liquor license of a tavern, when perfected, has priority over a subsequent tax lien of the United States. Paramount Fin. Co. v. United States, 13 Ohio Misc. 195, 379 F.2d 543 (6th Cir. Ohio 1967).

14. Defective security interests.

Secured party did not have security interest in inventory located at debtor's retail furniture business where security agreement signed by debtor granted security interest in "all machinery, equipment and inventory maintained in the conduct of the debtor's business...," where debtor maintained two businesses, a furniture manufacturing business and a retail furniture store, where retail furniture business was not mentioned in security agreement and where debtor testified that inventory at retail store was not intended to be included in security agreement. In re Metzler, 405 F. Supp. 622 (N.D. Ala. 1975).

Financing statement between wholesaler and retailer describing collateral but containing no indication of obligation for which collateral was security could not be considered "security agreement" and did not elevate wholesaler to status of preferred creditor. Needle v. Lasco Indus., Inc., 10 Cal. App. 3d 1105 (2d Dist. 1970).

15. —Failure to perfect.

Fact that security interest in citrus packing equipment was never perfected did not preclude enforcement against defaulting buyer. DeVita Fruit Co. v. FCA Leasing Corp., 71 Ohio Op. 2d 525, 473 F.2d 585 (6th Cir. Ohio 1973).

Lack of perfection of security interest under Article 9 of UCC relates only to priority over other creditors' interests in collateral, and security agreement as between parties themselves and secured party's rights over collateral as against debtor are unaffected by failure to perfect security interest; thus, assignee for security purposes of beneficial interest in land trust was entitled to redeem from tax sale of real estate which comprised corpus of trust notwithstanding his failure to perfect security interest by filing financing statement. Application of County Treasurer of Du Page County (App. 2 Dist.1973) 16 Ill. App. 3d 385, 306 N.E.2d 743

III. Under Former § 75-9-203(4).

16. In general.

The conditions for a valid and enforceable security agreement under the Uniform Commercial Code are: (1) a written agreement signed by the debtor granting a security interest in collateral; (2) a description of the collateral; (3) value given by the secured party; and (4) debtor's rights in the collateral. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

17. Construction with other laws.

The fact that Uniform Commercial Code was enacted subsequent to the Motor Vehicle Sales Finance Act of 1947 (69 Purdon's Pennsylvania Statutes §§ 601 et seq.), and there is a general repealing clause in the Code, is not necessarily conclusive on the issue of legislative intent, and, in view of § 9-201, providing that nothing in the article validates any charge or practice illegal under any rule of law or regulation governing instalment sales, and § 9-203, providing that transaction although subject to the article must also comply with the Motor Vehicle Sales Finance Act, the legislature did not intend to repeal the earlier law. First Nat'l Bank v. Horwatt, 192 Pa. Super. 581, 162 A.2d 60 (1960).

18. —With other sections.

Where two certificates of deposit were indorsed in blank by owners and delivered to bank to enable third party to obtain line of credit from bank; where in connection with delivery of certificates, owners thereof also simultaneously executed two instruments entitled "Consent to Pledge" and "Security Agreement-Pledge" which specifically described collateral (the two certificates of deposit) for proposed extension of credit by bank; and where bank in reliance on such instruments and delivery of the collateral advanced desired line of credit to third party, effect of transaction under UCC § 9-304(1) and § 9-305 was to create and perfect valid security interest in certificates in favor of bank which was enforceable under UCC § 9-203(1). Montavon v. Alamo Nat'l Bank, 554 S.W.2d 787 (Tex. Civ. App. 1977).

Provision of motor vehicle retail installment sales act requiring, under certain circumstances, election between alternative remedies was in conflict with cumulative remedies provided in UCC § 9-503 and 9-504, and therefore, pursuant to UCC § 9-203(4), which provides that where there is any conflict between provisions of Article 9 of Uniform Commercial Code and provisions of motor vehicle retail installment sales act, provisions of latter statute shall apply, creditor with security interest in automobile was limited to election required by such statute where conditions precedent to applicability of statute had been met. Chicago City Bank & Trust Co. v. Anderson, 26 Ill. App. 3d 421, 325 N.E.2d 701 (1st Dist. 1975).

This section of the Illinois UCC deviates from the model Uniform Act in that it provides that a transaction, although subject to the UCC is also subject to the Retail Instalment Sales Act of that state. First Nat'l Bank v. Husted, 57 Ill. App. 2d 227, 205 N.E.2d 780 (2d Dist. 1965).

RESEARCH REFERENCES

ALR. Transfers or assignments within Federal anti-assignment statutes. 12 A.L.R.2d 460.

Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with law governing transfer of title. 58 A.L.R.2d 1351.

Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or instalment sale contract. 63 A.L.R.3d 50.

Who is "person in business of selling goods of that kind" within provision of UCC § 1-201(9) defining buyer in ordinary course of business for purposes of UCC § 9-307(1). 73 A.L.R.3d 338.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 135 et seq.

78 Am. Jur. 2d, Warehouses § 90 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:9 (instruction to jury; transaction subject to other regulatory statutes).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:344 (priorities; over unperfected interest; assignment for payment of debt as not a security transaction).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:152-9:155 (validity of agreement).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1697 through 253:1976 (general effectiveness of security agreement; enforceability of security interest).

CJS. 79 C.J.S., Secured Transactions § 17 et seq.

93 C.J.S., Warehousemen and Safe Depositaries §§ 65-72.

Law Reviews. 1983 Mississippi Supreme Court Review: Article 9 priority provisions and right of set-off. 54 Miss. L. J. 105, March, 1984.

§ 75-9-202. Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — Passing of title, see § 75-2-401.
Effect of seller's tender; delivery on condition, see § 75-2-507.
Scope of Article, see § 75-9-109.
Possessory lien, see § 75-9-333.
Ineffective restrictions, see § 75-9-408, § 75-9-409.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-202.
6. In general.
7. After-acquired property.
8. Determination of title.
9. Locus of title.
10. Miscellaneous.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-202.

6. In general.

Under UCC §§ 9-203(1) and 9-204(1), there are four basic requirements to the creation of a valid security interest: (1) a security agreement must be entered into, (2) the agreement must be in writing or the creditor must be in possession of the collateral, (3) the debtor must have rights in the collateral, and (4) the secured party must give value. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978).

The steps that must be taken as a prerequisite to the creation of a security interest that is enforceable against the debtor are stated in UCC §§ 9-203(1)(a) and (b) and 9-204(1) and may be summarized as follows: (1) the parties must enter into a security agreement; (2) they must reduce as much of that agreement to writing as is necessary to satisfy UCC § 9-203(1)(b), which also requires that the debtor sign such writing, or else possession of the collateral must be given to the creditor; (3) the debtor must acquire rights in the collateral; and (4) the secured party must give value. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

Where security interest is involved, title is immaterial. Harney v. Spellman, 113 Ill. App. 2d 463, 251 N.E.2d 265 (4th Dist. 1969).

Each provision of this Article with regard to rights, remedies, and obligations in connection with secured transactions applies whether title to collateral is in the secured party or in the debtor. McDonald v. Peoples Auto. Loan & Fin. Corp. of Athens, Inc., 115 Ga. App. 483, 154 S.E.2d 886 (1967).

7. After-acquired property.

The rights of a creditor in after-acquired property under a security agreement, conferred by § 9-204(3) of the instant chapter, are not affected, by virtue of § 9-202, by the fact, in and of itself, that the after-acquired property is delivered to the debtor under a conditional sales agreement by which title is retained by the seller. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

8. Determination of title.

Devices whereby title is reserved in the seller-creditor for a period of time following possession by the debtor are treated under UCC Article 9 as though title had been transferred to the debtor and the seller-creditor had retained only a security interest in the goods. O'Dell v. Kunkel's, Inc., 581 P.2d 878 (Okla. 1978).

Creation of security interest does not automatically vest title in secured party; rather, UCC leaves determination of who has title to parties to security agreement. Blackhawk Heating & Plumbing Co. v. Geeslin, 530 F.2d 154 (7th Cir. Ill. 1976).

9. Locus of title.

Under UCC §§ 9-203(1) and 9-204(1), there are four basic requirements to the creation of a valid security interest: (1) a security agreement must be entered into, (2) the agreement must be in writing or the creditor must be in possession of the collateral, (3) the debtor must have rights in the collateral, and (4) the secured party must give value. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978).

The steps that must be taken as a prerequisite to the creation of a security interest that is enforceable against the debtor are stated in UCC §§ 9-203(1)(a) and (b) and 9-204(1) and may be summarized as follows: (1) the parties must enter into a security agreement; (2) they must reduce as much of that agreement to writing as is necessary to satisfy UCC § 9-203(1)(b), which also requires that the debtor sign such writing, or else possession of the collateral must be given to the creditor; (3) the debtor must acquire rights in the collateral; and (4) the secured party must give value. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

Since the draftsmen of the UCC intended that its provisions should not be circumvented by manipulation of the locus of title, consignment sales, conditional sales, and other arrangements or devices whereby title is retained in the seller for a period following possession by the debtor are all treated under Article 9 as though title had been transferred to the debtor and the creditor-seller had retained only a security interest in the goods. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

In order to meet the needs of the modern credit world, the Code ignores the question of the location of title. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

The Code simplifies the prior law by making immaterial the location of title as between creditor and the debtor. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

In determining priorities it is immaterial whether title to collateral is in the secured party or the debtor. Bloom v. Hilty, 427 Pa. 463, 234 A.2d 860 (1967).

Since the UCC has abolished the technical distinctions between the various security devices, the federal bankruptcy courts should no longer feel compelled to engage in the purely theoretical exercise of locating "title;" nor should considerations of where "title lies" influence the courts in the exercise of their equitable discretion in ruling upon a security holder's petition for reclamation of collateral. In re Yale Express Sys., 370 F.2d 433 (2d Cir. N.Y. 1966).

10. Miscellaneous.

Under UCC § 9-202, legal title to equipment of corporation, if not immaterial, was not decisive as to extent to which equipment could be carried as asset on corporation's balance sheet, even when transaction was cast in terms of lease-purchase option agreement, and in light of UCC § 9-504(2), such equipment represented net asset to extent that its value exceeded any indebtedness secured by it. Ellzey v. Fyr-Pruf, Inc., 376 So. 2d 1328 (Miss. 1979).

Judgment creditor's assignee brought replevin action against debtor's transferee; assignee had paper title to bowling alleys in question; transferee actually possessed equity in alleys, subject to assignee's security interest; held, debtor's rights were not cut off merely as a result of debtor's failure to make payments and default judgment against him. Brandywine Lanes, Inc. v. Pittsburgh Nat'l Bank, 437 Pa. 499, 264 A.2d 377 (1970).

While the Code provides for the retention of a Motor Vehicle Act requiring the notation on the title certificate of liens of creditors, the Code and such an Act are to be read together, with the consequence that where the notation provision of the Motor Vehicle Act is specified in order to make the lien valid against creditors, it will not have any effect on the security interest as between the creditor and the debtor. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

RESEARCH REFERENCES

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 5-8, 98.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:151 (instruction to jury; person in whom title to collateral not material).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1697 through 253:1976 (general effectiveness of security agreement; enforceability of security interest).

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One (1) of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under Section 75-9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 75-8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106, or 75-9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to Section 75-4-210 on the security interest of a collecting bank, Section 75-5-118 on the security interest of a letter-of-credit issuer or nominated person, Section 75-9-110 on a security interest arising under Article 2 or 2A of Title 75, and Section 75-9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b) (3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 75-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 60, eff from and after July 1, 2006.

Cross References — Definitions, see § 75-9-102.
Right of the debtor to use collateral, see § 75-9-205.
Buyer in ordinary course of business takes free of security interest, see § 75-9-320.

JUDICIAL DECISIONS

I. Under Current Law.

1. Attachment.
2.-5. [Reserved for future use.]

II. Under Former § 75-9-203(1) through (3).

6. In general.
7. Attachment.
8. Description of collateral.
9. —After-acquired property.
10. —Crops.
11. —Description by reference.
12. —Extrinsic evidence.
13. —General descriptions.
14. —Serial numbers.
15. —Miscellaneous.
16. —Particular documents or acts creating security interest.
17. —Conditional sales agreement.

18. —Financing statement.
19. —Letters or course of conduct.
20. —Oral agreements.
21. —Promissory notes.
22. —Title documents.
23. —Trust receipts.
24. Perfection.
25. Possession.
26. Priority.
27. Proceeds.
28. Writing requirement.
29. —Formal requirements.
30. —Formal requirements; signature.

I. Under Current Law.

1. Attachment.

Judgment of the district court in a case to determine ownership of cattle, granting summary judgment for the buyer of the cattle on the ground that the apparent seller was the owner and passed title to the buyer free of a lien, was reversed and remanded, because a fact issue existed on the ownership of the apparent seller; plaintiff bank's and defendant bank's security interests properly perfected on an individual and his property, attached to the cattle only if the apparent seller was a sole proprietorship of the individual, but if the apparent seller operated as a partnership or limited liability company, the individual did not have sufficient rights in the cattle to encumber them. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549 (5th Cir. 2007).

2.-5. [Reserved for future use.]

II. Under Former § 75-9-203(1) through (3).

6. In general.

Security agreements relating to collateral in possession of secured party are not required to be in writing, subject to applicability of the statute of frauds. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

A lender's forbearance from bringing suit to recover for the borrower's selling of vehicles out of trust so that the borrower could remain in business and repay the money that he owed to the lender constituted the giving of "value" for the purpose of attachment of the lender's security interest. Ford Motor Credit Co. v. State Bank & Trust Co., 571 So. 2d 937 (Miss. 1990).

Under Wisconsin law, even though the perfection of a security interest in a motor vehicle is governed by the provisions of the Wisconsin motor vehicle statutes, the creation of a security interest in a vehicle is governed by the Wisconsin Uniform Commercial Code. Under Wisconsin UCC § 9-203(1), to create an enforceable security interest in goods not in the possession of the creditor, all of the following requirements must be met: (1) the debtor must sign a security agreement describing the collateral, (2) the creditor must give value, and (3) the debtor must have rights in the collateral. National Exch. Bank v. Mann, 81 Wis. 2d 352, 260 N.W.2d 716 (1978).

Under UCC § 9-203(2), security interest in personal property or fixtures attaches when debtor signs security agreement that is in proper form, value is given, and debtor has rights in collateral. In re County Green Ltd. Partnership, 438 F. Supp. 693 (W.D. Va. 1977).

In suit between secured party and debtor, as distinguished from suits involving third parties, Code § 9-203 provides sole requirements for enforceable security interest. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

The only requirements necessary for an enforceable non-possessory security interest against a debtor are (a) in writing, (b) the debtor's signature and (c) a description of the collateral or kinds of collateral. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

7. Attachment.

A security interest is perfected when it has attached and all applicable steps required for perfection have been taken (see UCC § 9-303(1)). The term "attach" is used in Article 9 to describe the point at which property becomes subject to a security interest. UCC § 9-204 (now § 9-203) governs when a security interest attaches. It cannot attach until there is an agreement that it attach, value is given, and the debtor has rights in the collateral. Thorp Sales Corp. v. Dolese Bros. Co., 453 F. Supp. 196 (W.D. Okla. 1978).

Under UCC § 9-203(1)(b) and § 9-204(1), a security interest attaches only where (1) there is a written security agreement, (2) value is given by the creditor, and (3) the debtor has rights in the collateral. Queen of the N., Inc. v. LeGrue, 582 P.2d 144 (Alaska 1978).

With respect to the distinction between "attachment" and "perfection" of a security interest, "perfection" is significant only when the question involves priority between security interests. "Attachment," on the other hand, determines the existence of a security interest as between the seller and the purchaser. Babson Credit Plan, Inc. v. Cordele Prod. Credit Ass'n, 146 Ga. App. 266, 246 S.E.2d 354 (1978).

Buyers of mobile home who executed retail installment sales contract and security agreement (1) were "buyers in the ordinary course of business" under Arizona UCC § 9-307(1), even though they did not make down payment on home or take possession of it at time of entering into contract, (2) buyers' binding promise to pay was sufficient to meet requirements of Arizona UCC § 9-203(1), as amended in 1972, for attachment of security interest, and (3) security interest in home attached when buyers executed installment-purchase agreement and security agreement with seller. Rex Fin. Corp. v. Mobile Am. Corp., 119 Ariz. 176, 580 P.2d 8 (1978).

Secured creditor with security interest in crops grown during 1971 on two tracts of land, one owned by debtor and other leased by him, took priority over purported attaching creditor, claiming under writ of attachment issued November 11, 1971, with respect to proceeds from sale of crops, notwithstanding security agreement covering both tracts of land was not filed until November 12, 1971: (1) With respect to "leased" tract, where original financing statement covering crops growing or to be grown thereon was filed on July 5, 1966, security agreement covering 1971 crops on both "leased" and "owned" tracts was executed on February 18, 1971, and continuation statement was filed on June 28, 1971, security interest was perfected by filing of continuation statement prior to issuance of attaching creditor's purported attachment and levy thereunder, and took priority over any rights acquired by attaching creditor; (2) with respect to "owned" land, although secured party's security interest was not perfected by filing as of time of levy under attaching creditor's purported attachment, evidence showed that attaching creditor either had actual notice of secured party's interest in crops or could be charged with actual knowledge or duty to secure knowledge of secured party's interest, and, thus, secured party's unperfected security interest took priority over rights of attaching creditor. Gulf Oil Co. United States v. First Nat'l Bank, 503 S.W.2d 300 (Tex. Civ. App. 1973).

Purchase money security interest is not enforceable until after certain security agreements are signed by debtor, but fact that agreements were not signed until after installation of equipment and thus not enforceable at time of installation, did not prevent attachment of security interest at time of installation. Honea v. Laco Auto Leasing, Inc., 80 N.M. 300, 454 P.2d 782 (Ct. App. 1969).

8. Description of collateral.

Description of collateral in purchase-money security agreement by model and serial number alone meets requirements of UCC §§ 9-110 and 9-203(1)(b) where secured party is manufacturer or dealer in specialty appliances sold under a trade name. Personal Thrift Plan of Perry, Inc. v. Georgia Power Co., 242 Ga. 388, 249 S.E.2d 72 (1978).

Where security agreement covering herd of cattle described collateral as "84 Holstein Cows and 14 Holstein Heifers, 1 to 2 ½ years of age," description of collateral was sufficient under UCC § 9-110 to create enforceable security interest under UCC § 9-203(1)(b); furthermore, where security agreement provided that debtors had "right to sell cows that ceased to be productive or to otherwise cull the herd; but they shall at all times retain a sufficient number of replacement heifers, or otherwise provide satisfactory replacements, to maintain a herd not smaller than that being now purchased" and that "Buyers agree to grant t[sic] Sellers a lien upon said property [cattle] and upon the replacements therefor...," use of term "replacement" was adequate to create security interest in after-acquired property (i.e., cattle) under UCC § 9-204(3). Whitworth v. Krueger, 98 Idaho 65, 558 P.2d 1026, 99 A.L.R.3d 1046 (1976).

Unlike a financing statement which is designed merely to put creditors on notice that further inquiry is prudent, a security agreement embodies the intentions of the parties and is the primary source to which a creditor's or potential creditor's inquiry is directed and must be reasonably specific; thus term "equipment" in omnibus clause of security agreement did not include automobiles owned by bankrupt corporation. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Description of collateral contained in security agreement must be reasonably specific. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Purpose of filing financing statement is notice to any third party; and requirement of description of collateral is satisfied if description reasonably informs third parties that certain identifiable item belonging to or in possession of debtor may be subject to prior security interest and that further inquiry is necessary to determine if it is exact item being offered them as collateral. Associates Capital Corp. v. Bank of Huntsville, 49 Ala. App. 523, 274 So. 2d 80 (Civ. App. 1973).

Repair order reserving security interest in automobile in dealer's favor and signed by customer adequately described automobile within meaning of Code § 9-203 by means of notations as to brand of automobile, year, model, speedometer reading and license number. River Oaks Chrysler-Plymouth, Inc. v. Barfield, 482 S.W.2d 925 (Tex. Civ. App. 1972).

9. —After-acquired property.

Where security agreement covering herd of cattle described collateral as "84 Holstein Cows and 14 Holstein Heifers, 1 to 2 ½ years of age," description of collateral was sufficient under UCC § 9-110 to create enforceable security interest under UCC § 9-203(1)(b); furthermore, where security agreement provided that debtors had "right to sell cows that ceased to be productive or to otherwise cull the herd; but they shall at all times retain a sufficient number of replacement heifers, or otherwise provide satisfactory replacements, to maintain a herd not smaller than that being now purchased" and that "Buyers agree to grant t[sic] Sellers a lien upon said property [cattle] and upon the replacements therefor...," use of term "replacement" was adequate to create security interest in after-acquired property (i.e., cattle) under UCC § 9-204(3). Whitworth v. Krueger, 98 Idaho 65, 558 P.2d 1026, 99 A.L.R.3d 1046 (1976).

10. —Crops.

Catfish raised by fish farmers did not qualify as "crop" for purpose of this section and Section 75-9-402. Sunburst Bank v. Findley, 76 B.R. 547 (Bankr. N.D. Miss. 1987).

Secured creditor with security interest in crops grown during 1971 on two tracts of land, one owned by debtor and other leased by him, took priority over purported attaching creditor, claiming under writ of attachment issued November 11, 1971, with respect to proceeds from sale of crops, notwithstanding security agreement covering both tracts of land was not filed until November 12, 1971: (1) with respect to "leased" tract, where original financing statement covering crops growing or to be grown thereon was filed on July 5, 1966, security agreement covering 1971 crops on both "leased" and "owned" tracts was executed on February 18, 1971, and continuation statement was filed on June 28, 1971, security interest was perfected by filing of continuation statement prior to issuance of attaching creditor's purported attachment and levy thereunder, and took priority over any rights acquired by attaching creditor; (2) with respect to "owned" land, although secured party's security interest was not perfected by filing as of time of levy under attaching creditor's purported attachment, evidence showed that attaching creditor either had actual notice of secured party's interest in crops or could be charged with actual knowledge or duty to secure knowledge of secured party's interest, and, thus, secured party's unperfected security interest took priority over rights of attaching creditor. Gulf Oil Co. United States v. First Nat'l Bank, 503 S.W.2d 300 (Tex. Civ. App. 1973).

Where financing statement and security agreement purportedly gave secured party security interest in all of debtor's crops, but contained accurate legal description of certain farm lands belonging to debtor and omitted 3 other parcels of land on which debtor planted and harvested crops, crop description was insufficient to put third person on notice under UCC. People's Bank v. Pioneer Food Indus., Inc., 253 Ark. 277, 486 S.W.2d 24 (1972).

Description of collateral in security instrument is sufficient if it includes all crops grown on land as collateral; crop does not have to be described as tobacco crop. United States v. Big Z Whse., 311 F. Supp. 283 (S.D. Ga. 1970).

Combined financing statement and security agreement referring to seven acres of cotton to be produced by debtor on lands of third party was fatally defective under Code § 9-203(1)(b) in that it failed to indicate whether debtor grew exactly seven acres of cotton and whether anyone else was also growing cotton on land referred to. Piggott State Bank v. Pollard Gin Co., 243 Ark. 159, 419 S.W.2d 120 (1967).

11. —Description by reference.

Under UCC § 9-105(1)(h), which defines security agreement as one which "creates or provides for" a security interest, promissory note which included line, "This note is secured by a Security Interest in subject personal property as per invoices," qualified as security agreement; incorporation of invoices into promissory note by reference was sufficient description of collateral under UCC §§ 9-203(1)(b) and 9-110, when coupled with existence of financing statement containing more specific description. In re Amex-Protein Dev. Corp., 504 F.2d 1056 (9th Cir. Cal. 1974).

Where there was security agreement complete on its face and containing no reference to financing statement, maturity date appearing only on financing statement would not be read into security agreement, security agreement was enforceable according to its terms as between parties, and secured party's claim was therefore superior to that of assignee as successor in interest to debtor assignor when secured party took possession of merchandise. In re Marta Coop., 74 Misc. 2d 612 (1973).

Security agreement describing collateral as "furniture as per attached listing," with no listing attached, did not adequately describe collateral. J.K. Gill Co. v. Fireside Realty, Inc., 262 Or. 486, 499 P.2d 813 (1972).

Evidence establishes that the parties, by attaching the financing statements to the security agreement, incorporated the clarifying language of the financing statement into the security agreement, and clearly created a lien in seller's favor upon the inventory in all of the purchaser's stores. In re Nickerson & Nickerson, Inc., 452 F.2d 56 (8th Cir. Neb. 1971).

12. —Extrinsic evidence.

Creditor held perfected security interest in inventory and accounts receivable of debtor where transactions between parties were evidenced by (1) recorded financing statement; (2) series of 11 promissory notes; (3) letter of debtor acknowledging debt and pledge of security; and (4) course of dealing between debtor and secured party. In re Penn Hous. Corp., 367 F. Supp. 661 (W.D. Pa. 1973).

Where upon execution of first loan debtors personally guaranteed not only loan then made but also all future loans to be made to corporation, and later executed their assignment of beneficial interest in trust deed to be held by bank as collateral security for first loan, and where 3 further loans were made, subject to continuing personal guarantees, each note except the first expressly referring to assignment of beneficial interest as part of collateral, and all debtors joined in signing financial statements clearly recognizing fact that assignment of beneficial interest was held by bank as security for loans, documents collectively satisfied requirements of § 9-203, thereby constituting valid security interest. In re Wambach, 343 F. Supp. 73 (N.D. Ill. 1972), aff'd, 484 F.2d 572 (7th Cir. Ill. 1973).

Notes, guarantee, absolute assignment and financing statement, when construed together, are conclusive evidence that beneficial interest in land trust was to serve as collateral for various loans, and these documents collectively satisfied requirements of UCC § 9-203, since security agreement terms need not be confined to a single document. In re Wambach, 343 F. Supp. 73 (N.D. Ill. 1972), aff'd, 484 F.2d 572 (7th Cir. Ill. 1973).

Oral testimony of secured party is without probative force to establish security interest, since it fails to satisfy statutory requirement that security agreement be in writing and signed by debtor. Mosley v. Dallas Entertainment Co., 496 S.W.2d 237 (Tex. Civ. App. 1973).

Where certain items of equipment were not described in security agreement covering debtor's drilling rigs, disputed items could not be included within security agreement by "external evidence" consisting of unsigned financing statement describing disputed items and evidence that debtor mortgaged and secured party took, pursuant to mortgage, security on all of debtor's equipment. Jones & Laughlin Supply v. Dugan Prod. Corp., 85 N.M. 51, 508 P.2d 1348 (Ct. App. 1973).

In considering whether a security agreement covers particular collateral, the debtor's intent must be judged by the language of the security agreement and not by possible inferences from the surrounding circumstances. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

13. —General descriptions.

Secured party did not have security interest in inventory located at debtor's retail furniture business where security agreement signed by debtor granted security interest in "all machinery, equipment and inventory maintained in the conduct of the debtor's business...," where debtor maintained two businesses, a furniture manufacturing business and a retail furniture store, where retail furniture business was not mentioned in security agreement and where debtor testified that inventory at retail store was not intended to be included in security agreement. In re Metzler, 405 F. Supp. 622 (N.D. Ala. 1975).

Description of collateral contained in security agreement must be reasonably specific; and term "equipment" in omnibus clause of security agreement did not include two automobiles owned by debtor corporation. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Description of collateral in security agreement is intended only to evidence agreement of parties and need only make possible identification of thing described; and description of all farm and other equipment now owned or hereafter acquired by debtor was sufficient description of after-acquired water irrigation equipment as collateral in which secured party had security interest. United States v. First Nat'l Bank, 470 F.2d 944 (8th Cir. Neb. 1973).

"All inventory" was adequate description of collateral, and it was unnecessary to set forth address where collateral was to be located, in description of collateral, when it was obvious or readily inferrable that type of collateral covered would naturally be located in those places where debtor did business. In re Little Brick Shirthouse, Inc., 347 F. Supp. 827 (N.D. Ill. 1972).

The following descriptions in security agreements are sufficient to give notice of sale of machinery, hay and cattle: "All livestock, fish, supplies and other farm products, including those in inventory, now owned or hereafter acquired by Debtor, together with all increases, replacements, substitutions, and additions thereto..." and "All farm and other equipment now owned or hereafter acquired by Debtor together with all replacements, substitutions, additions, and accessions thereto." United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

A lender who had floor planned a car dealership borrower's inventory of new vehicles had an attached security interest in used vehicles not floor planned by the lender, where the security agreement stated that the collateral included "all motor vehicles and other inventory of every kind," and there was no evidence that the borrower did not believe that the security agreement covered the used cars. Ford Motor Credit Co. v. State Bank & Trust Co., 571 So. 2d 937 (Miss. 1990).

The following description of the secured party, as it appeared in the extension of the security agreement, was sufficient to meet the Article 9 requirement that the description reasonably identify what was described: "all goods (as defined in Article 9 of the Uniform Commercial Code) whether now owned or hereafter acquired." James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

14. —Serial numbers.

Description of collateral in purchase-money security agreement by model and serial number alone meets requirements of UCC §§ 9-110 and 9-203(1)(b) where secured party is manufacturer or dealer in specialty appliances sold under a trade name. Personal Thrift Plan of Perry, Inc. v. Georgia Power Co., 242 Ga. 388, 249 S.E.2d 72 (1978).

Security agreement and financing statement adequately described collateral as required by UCC §§ 9-203, 9-402, and 9-110 where, although secured party had erroneously omitted first digit of identification number of automobile, omitted digit represented information previously described in words on each document. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

Where, after wrecked tractor was repaired, salvaged parts not used in repair and consisting of cab, front axle and chassis, engine, consisting of engine block and crank, together with other parts, some new and some from salvage from other vehicles, were used to rebuild another tractor, security agreement and financing statement containing identification of tractor built from salvage parts in terms of year of original tractor and original Vehicle Identification Number as imprinted on salvaged engine block contained sufficient description of collateral to satisfy UCC. Richardson v. United States, 358 F. Supp. 994 (E.D. Ark. 1973).

The description of a caterpillar scraper by an incorrect serial number is insufficient in the absence of some physical description appearing of record in the security instrument which provides a key to the identity of the property. Yancey Bros. Co. v. Dehco, Inc., 108 Ga. App. 875, 134 S.E.2d 828 (1964).

15. —Miscellaneous.

Where security agreement and financing statement described collateral as watch and also identified watch by brand and model number, description of collateral was sufficient under UCC § 9-110; where security agreement described second item of collateral as, "ladies' bridal set white gold," but financing statement described collateral as, "one ladies' bracelet set-white gold,' description of collateral in security agreement was sufficient to create security interest but description in financing statement did not reasonably identify collateral and thus secured party did not have perfected security interest in bridal set. DWG, Inc. v. Peltier, 563 P.2d 152 (Okla. 1977).

Order directing seizure of tractors and trailers which were listed as collateral in security agreement and which had been sold by debtor to defendants could not stand where there was factual question as to whether, under UCC § 9-306(2), creditor, by reason of its prior dealings with debtor, had authorized it to sell chattels free of any liens by asserting its right to receive "proceeds" if chattels were sold; order directing seizure of trailer not specifically mentioned in security agreement was improper under UCC §§ 9-110 and 9-203(1)(b) where general language in after-acquired property clause of security agreement was insufficient to cover vehicles other than those specifically listed, unless they were given and accepted in replacement of specified vehicles. Long Island Trust Co. v. Porta Aluminum Corp., 44 A.D.2d 118 (2d Dep't 1974).

Where bank had possession of stock pledged as collateral for loans made to decedent's son and prior course of dealing between parties including signed hypothecation agreement form provided ample evidence of agreement that stock would serve as collateral for continuing advances by bank to son, bank had enforceable security interest in stock, despite absence of adequate description of stock in stock assignment and hypothecation agreement. Beyer's Estate v. Bank of Pa., 449 Pa. 24, 295 A.2d 280 (1972).

Omission from financing agreement covering automobile liability insurance policy of name of insurance company through which insured was to be insured rendered financing agreement void pursuant to Illinois Commercial Code provision requiring that security agreement contain description of collateral at time agreement is signed by debtor. Cheatem v. Cook, 8 Ill. App. 3d 425, 290 N.E.2d 707 (1st Dist. 1972).

16. —Particular documents or acts creating security interest.

"Agreement" in UCC § 9-204(1) means bargain of the parties and is used in UCC

§ 9-204 instead of "security agreement," which has reference to written contract for security interest, since under UCC § 9-203(1), not all security interests need be based on written security agreement. Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

Nothing in either UCC §§ 9-105 or 9-203 requires that financing statement be separate piece of paper from security agreement, or that any particular words be used to evidence security interest, and agreement must merely provide for security interest, so that third party might know that such interest exists in particular piece of property. Thus, instrument signed by secured party and debtor was valid security agreement, and not merely financing statement, where agreement provided for security interest by use of wording "Secured Hereby" in stamped overprint, and where document met requirements of security agreement in other respects, i.e., it described collateral and was signed by debtor. Morey Mach. Co. v. Great W. Indus. Mach. Co., 507 F.2d 987 (5th Cir. Fla. 1975).

Despite parties' intention and attempt to create security interest in favor of seller of automobile, bill of sale, describing automobile and setting out terms of payment and insurance, and certificate of title, showing purchaser to be owner and seller to be holder of first lien, did not satisfy minimal Code requirements, since neither contained language actually conveying security interest. Shelton v. Erwin, 472 F.2d 1118 (8th Cir. Mo. 1973).

In transaction where lease is intended as security, debtor must sign written instrument (so-called lease) describing collateral in order to comply with Ohio version of UCC § 9-203; language to effect that security interest is being created or provided for need not be included. In re Walter W. Willis, Inc., 30 Ohio Misc. 75, 313 F. Supp. 1274 (N.D. Ohio 1970), aff'd, 440 F.2d 995 (6th Cir. 1971).

17. —Conditional sales agreement.

In action by seller to recover ring, where ring was mailed to buyer with conditional sales agreement, where buyer called seller and approved ring, where buyer gave ring to wife as gift, where buyer subsequently signed conditional sales contract and then defaulted on payments, and where wife gave ring as security for payment of promissory note, seller's security interest was superior to interest of wife and interest of party taking ring as security for note; security interest of seller attached within meaning of UCC § 9-204 at time of buyer's receipt and verbal approval of ring, even though security interest was not enforceable against buyer under UCC § 9-203(1) until buyer subsequently signed conditional sales agreement. Mayor's Jewelers of Ft. Lauderdale, Inc. v. Levinson, 39 Ill. App. 3d 16, 349 N.E.2d 475 (2d Dist. 1976).

The fact that Uniform Commercial Code was enacted subsequent to the Motor Vehicle Sales Finance Act of 1947 (69 Purdon's Pennsylvania Statutes §§ 601 et seq.), and there is a general repealing clause in the Code, is not necessarily conclusive on the issue of legislative intent, and, in view of § 9-201, providing that nothing in the article validates any charge or practice illegal under any rule of law or regulation governing instalment sales, and § 9-203, providing that transaction although subject to the article must also comply with the Motor Vehicle Sales Finance Act, the legislature did not intend to repeal the earlier law. First Nat'l Bank v. Horwatt, 192 Pa. Super. 581, 162 A.2d 60 (1960).

18. —Financing statement.

Although financing statement under UCC § 9-402(1) may be filed before security agreement is made or security interest otherwise attaches, financing statement standing alone does not create security interest in debtor's property, but merely serves notice that named creditor may have a security interest therein. Thus, where buyer of tractor did not execute security agreement granting security interest in tractor to seller, and where seller did not take possession of tractor when financing statement signed by buyer was executed, seller under UCC § 9-203(1)(a) and (b) had no valid security interest in tractor, even though financing statement was filed for record in office of county circuit clerk. Gibbs v. King, 263 Ark. 338, 564 S.W.2d 515 (1978).

Where seller of cattle received notes, signed by debtor, with notations that they were secured by financing statements filed, describing collateral and signed by both debtor and secured party, secured party did not have perfected security interest in collateral described in financing statement since no security agreement was signed granting security interest in collateral. Barth Bros. v. Billings, 68 Wis. 2d 80, 227 N.W.2d 673 (1975).

Although no formal security agreement was executed by parties, financing statement covering collateral, together with resolution of debtor's directors itemizing collateral and establishing that agreement in fact existed to grant security interest, constituted security agreement within meaning of Code § 9-203(1)(b). In re Numeric Corp., 485 F.2d 1328 (1st Cir. Mass. 1973).

Financing statement cannot serve as security agreement where it does not grant creditor interest in collateral and does not identify obligation owed to creditor. Mosley v. Dallas Entertainment Co., 496 S.W.2d 237 (Tex. Civ. App. 1973).

Although a financing statement may serve as a security agreement so long as it meets the minimum requirements of UCC § 9-203, this method of "draftsmanship [is] likely to produce litigation and [is] not to be recommended." Evans v. Everett, 279 N.C. 352, 183 S.E.2d 109 (1971).

The filing of a financing statement does not create a perfected security interest where there is no agreement to establish that a security interest was intended. M. Rutkin Elec. Supply Co. v. Burdette Elec., Inc., 98 N.J. Super. 378, 237 A.2d 500 (Ch. Div. 1967).

A security agreement, as distinguished from a financing statement, is not invalid because it is signed only by the debtor and not by the creditor or lending party. National-Dime Bank v. Cleveland Bros. Equip. Co., 20 Pa. D. & C.2d 511 (1959).

19. —Letters or course of conduct.

In debtor's action against bank for conversion of certificate of deposit, which was issued by bank to debtor and constituted collateral for loan made to debtor by corporation affiliated with bank, where evidence showed (1) that debtor had borrowed $8,000,000 from such affiliated corporation to develop real estate project, (2) that part of loan's proceeds had been set aside as reserve fund to pay interest on debtor's note and also taxes, fees, and other assessments on property being developed, (3) that lender corporation had requested debtor to purchase, from amount loaned, a $200,000 certificate of deposit from defendant bank and pledge it with lender to supplement such reserve fund, (4) that debtor had purchased certificate and requested bank to deliver it to lender to hold under a pledge agreement, which actually was never executed, (5) that certificate had been renewed frequently during following three years, (6) that lender's correspondence concerning such renewals had repeatedly declared that certificate had been pledged to lender, and that debtor at no time had disputed such statements, and (7) that bank refused to deliver certificate to debtor after lender, in order to supplement reserve fund, had instructed bank to cash certificate and apply proceeds to lender's account, court held (1) that conduct of lender and debtor showed that they had intended to enter into security agreement under which certificate would pledged to lender, (2) that since lender had possession of certificate (i.e., the collateral), fact that such security agreement was oral did not affect its validity, since UCC § 9-203(1)(a) was intended to permit oral security agreements if creditor was in possession of collateral, (3) that under UCC § 9-204(1), a security agreement attaches as soon as parties so agree, creditor gives value, and debtor has rights in collateral, (4) that fact that debtor's letter to bank concerning issuance of certificate had referred to written pledge agreement to be prepared in future did not amount to explicit instruction that security interest was not to attach until parties' oral agreement had been reduced to writing, and (5) even if written security agreement actually had been condition to creation of lender's security interest in certificate, debtor's subsequent conduct had waived such condition, and he was estopped to assert it. Barton v. Chemical Bank, 577 F.2d 1329 (5th Cir. Ga. 1978).

Letter allegedly establishing assignment of foreign exchange contract rights to bank did not measure up to security agreement under UCC since it failed to contain "description of the collateral" as required by § 9-203(1)(a). Moreover, bank failed to file financing statement, as required by §§ 9-302(1) and 9-303 and, thus, failed to obtain valid and perfected assignment of contract rights. Purported assignment was not exempt from filing under UCC § 9-302(10(e) since, at time assignee allegedly assigned contract worth $1,000,000, assignee's total "outstanding accounts or contract rights" were $4,439,300; thus, assignment transferred just under 20 percent of assignee's accounts, including assigned contract right, which constituted "significant part" of assignee's outstanding accounts, especially in view of high absolute value of transaction at issue. Miller v. Wells Fargo Bank Int'l Corp., 406 F. Supp. 452 (S.D.N.Y. 1975), aff'd, 540 F.2d 548 (2d Cir. N.Y. 1976).

Signed letter identifying obligation secured, debtor, and collateral, and stating that arrangements detailed therein "are in accordance with our loan agreement" met the UCC § 9-203(1) requirements for a "security agreement". Nunnemaker Transp. Co. v. United Cal. Bank, 456 F.2d 28 (9th Cir. Cal. 1972).

A letter written by a subcontractor to his general contractor advising the latter of the assignment of his account for work performed to a bank, the written acceptance of the letter by the addressee, and the fact that the bank loaned money to the subcontractor taking the letter assignment as collateral, created a valid security interest which did not have to be perfected by the filing of a financing statement. Citizens & S. Nat'l Bank v. Capital Constr. Co., 112 Ga. App. 189, 144 S.E.2d 465 (1965).

20. —Oral agreements.

Oral lease of automobile was unenforceable security interest; UCC § 9-203 provides that where collateral is not in possession of secured party, security interest is not enforceable against debtor or third parties unless debtor has signed security agreement sufficiently describing collateral. Tate v. Gallagher, 116 N.H. 165, 355 A.2d 417 (1976).

Where debtor transferred title to truck, owned by debtor, to creditor as security for loan pursuant to oral agreement, application for new certificate of ownership signed by debtor was security agreement under UCC § 9-203, and parol evidence was properly admitted to show oral agreement. Kreiger v. Hartig, 11 Wash. App. 898, 527 P.2d 483 (1974).

21. —Promissory notes.

Although it is evident under UCC § 9-402 that one instrument may qualify as both security agreement and financing statement, from which it follows that financing statement may also constitute security agreement if it otherwise qualifies as such, where parties executed only promissory note in standard form and short form financing statements and where neither financing statements nor note manifested intent to create or provide for security interest, there was no security agreement as required by UCC § 9-203 and thus creditor did not acquire security interest. Crete State Bank v. Lauhoff Grain Co., 195 Neb. 605, 239 N.W.2d 789 (1976).

Under UCC § 9-105(1)(h), which defines security agreement as one which "creates or provides for" a security interest, promissory note which included line, "This note is secured by a Security Interest in subject personal property as per invoices," qualified as security agreement; incorporation of invoices into promissory note by reference was sufficient description of collateral under UCC §§ 9-203(1)(b) and 9-110, when coupled with existence of financing statement containing more specific description. In re Amex-Protein Dev. Corp., 504 F.2d 1056 (9th Cir. Cal. 1974).

Where neither financing statement showing plaintiff to be secured party nor promissory notes payable to plaintiff contained words granting plaintiff security interest, plaintiff did not have enforceable security interest in debtor's assets which would entitle it to preferred claim in receivership proceedings. L & V Co. v. Asch, 267 Md. 251, 297 A.2d 285 (1972).

22. —Title documents.

Where bank loaned defendants money to purchase car and defendants did not have bank's lien noted on vehicle's certificate of title, as required by security agreement, bank was entitled to replevy car even though its lien was not noted on certificate of title, since under UCC § 9-203(1), failure of lender to perfect lien as against third parties does not invalidate lender's security interest as against original borrowers. First Galesburg Nat'l Bank & Trust Co. v. Martin, 58 Ill. App. 3d 113, 373 N.E.2d 1075 (3d Dist. 1978).

Where (1) leasing company on November 29, 1974 sold automobile to buyer who paid cash and received possession of vehicle and also bill of sale which correctly described vehicle and identified it by its identification number, (2) buyer, who did not receive certificate of title to vehicle until January, 1975, applied for new certificate of title and title was recorded by Division of Motor Vehicles on January 27, 1975, (3) buyer later learned that certificate of title sent to him by lessor-seller was for another vehicle similar to one buyer had purchased, (4) lessor-seller, on January 27, 1975, entered into security agreement with bank in connection with loan and gave bank security interest in certain items of collateral which included vehicle sold to buyer, (5) bank filed financing statement covering buyer's vehicle and also sent vehicle's real certificate of title to Division of Motor Vehicles for recording of bank's interest, and (6) bank, on lessor-seller's default on loan, sought to liquidate collateral, including vehicle sold to buyer, but buyer refused to relinquish possession of such vehicle, bank's alleged security interest in buyer's vehicle was unenforceable (1) because of uncertainty with which Wisconsin motor vehicle statutes purported to establish time of transfer of title to a motor vehicle, (2) express legislative intent that a certificate of title constituted only prima facie evidence of ownership, (3) necessity under UCC § 9-203(1)(c) that debtor (lessor-seller of vehicle in suit) have rights in buyer's vehicle that could be encumbered, and (4) fact that lessor-seller, after sale of vehicle in suit, had no rights therein that could be encumbered, since title to vehicle had already passed to buyer under UCC § 2-401(2) when vehicle was delivered to buyer. National Exch. Bank v. Mann, 81 Wis. 2d 352, 260 N.W.2d 716 (1978).

Where husband obtained loan from bank to purchase two used automobiles and signed two retail installment contracts purporting to give security interest in vehicles to bank, vehicles were registered in wife's name and certificates of title were issued listing her as new owner, bank was listed as first lienor on title certificates pursuant to statute (Connecticut Certificate of Title Act §§ 14-165 et seq.) providing that security interest in automobile could be perfected only by listing secured creditor's name and address on vehicle's title certificate, and husband and wife thereafter filed voluntary petitions in bankruptcy and bank sued to recover possession of vehicles from bankruptcy trustee, although bank's security interest was adequately perfected under both Certificate of Title Act and theory of "notice filing," it was not perfected under UCC § 9-203(1) because (1) wife alone received title to and possession of vehicles, (2) wife did not sign installment contracts that purported to create security interest in vehicles, and (3) husband did not acquire sufficient rights in collateral (vehicles) to be able to grant security interest therein to bank which could be perfected under Article 9. Connecticut Bank & Trust Co. v. Schindelman, 432 F. Supp. 1013 (D. Conn. 1977).

Application for certificate of title to house trailer, signed by buyer, describing security interest, and containing description of trailer, was sufficient to create security agreement within meaning of UCC § 9-203 and filing of application for certificate of title with the Secretary of State as provided by the state vehicle code constituted perfection of security interest; thus, pursuant to UCC § 9-301(1), seller's security interest was superior to subsequently attaching landlord's lien. Peterson v. Ziegler, 39 Ill. App. 3d 379, 350 N.E.2d 356 (5th Dist. 1976).

In action by debtor against creditor and others to recover damages for conversion of his automobile, title certificate, which was signed by debtor and delivered to creditor as security for loan and which contained description of collateral, was sufficient to constitute signed security agreement within meaning of UCC § 9-203(1)(b) and gave creditor enforceable security interest in automobile. Clark v. Vaughn, 504 S.W.2d 550 (Tex. Civ. App. 1973), writ ref'd n.r.e., (Apr. 17, 1974).

Where plaintiff purchased trailers from manufacturer, retained title and parked them on dealer's used car and truck lot, under arrangement that whenever dealer found buyer plaintiff was to bring in certificate of origin and indorse it over to buyer under mistaken impression that dealer could not register title without such certificate, dealer sold trailers but failed to pay plaintiff, buyers financed purchases with defendant bank and bank foreclosed on its security interest in trailers after buyers defaulted, whether plaintiff could recover against bank for conversion depended on whether consignment of trailers was intended as security; if plaintiff's retention of title was limited to reservation of security interest, he could not prevail since he did not retain possession of collateral nor did dealer sign security agreement describing collateral as required by UCC § 9-203(1). Nauman v. First Nat'l Bank, 50 Mich. App. 41, 212 N.W.2d 760 (1973).

23. —Trust receipts.

Requirement that security agreement be in existence in order to create security interest may be satisfied by instrument which takes form of trust receipt. In re Mann, 318 F. Supp. 32 (W.D. Va. 1970).

24. Perfection.

A lender's attached purchase money security interest in an automobile dealership's inventory of used vehicles was not properly perfected under the Mississippi Motor Vehicle Title Law where the lender never filed a financing statement. Ford Motor Credit Co. v. State Bank & Trust Co., 571 So. 2d 937 (Miss. 1990).

Ordinarily a security interest is perfected by filing a financing statement or by the creditors having possession of the collateral. M. Rutkin Elec. Supply Co. v. Burdette Elec., Inc., 98 N.J. Super. 378, 237 A.2d 500 (Ch. Div. 1967).

When the controversy is between the secured seller and the debtor-buyer, the interest of the secured party is protected and it is immaterial whether the steps were taken which would be necessary to perfect the interest of the secured party as against innocent third persons. Rottman v. Wallace, 52 Luz. Legal Reg. Rep. 187 (Pa. 1962).

25. Possession.

Under UCC §§ 9-203(1) and 9-204(1), there are four basic requirements to the creation of a valid security interest: (1) a security agreement must be entered into, (2) the agreement must be in writing or the creditor must be in possession of the collateral, (3) the debtor must have rights in the collateral, and (4) the secured party must give value. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978).

The steps that must be taken as a prerequisite to the creation of a security interest that is enforceable against the debtor are stated in UCC §§ 9-203(1)(a) and (b) and 9-204(1) and may be summarized as follows: (1) the parties must enter into a security agreement; (2) they must reduce as much of that agreement to writing as is necessary to satisfy UCC § 9-203(1)(b), which also requires that the debtor sign such writing, or else possession of the collateral must be given to the creditor; (3) the debtor must acquire rights in the collateral; and (4) the secured party must give value. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

The security agreement need not be in writing where the collateral is in the possession of the secured party. Commercial Credit Corp. v. National Credit Corp., 251 Ark. 702, 473 S.W.2d 881 (1971).

Account receivable is intangible which cannot be "possessed" within Code § 9-203(1)(a), and under Code § 9-203(1)(b) security interest therein is unenforceable in absence of security agreement signed by debtor. M. Rutkin Elec. Supply Co. v. Burdette Elec., Inc., 98 N.J. Super. 378, 237 A.2d 500 (Ch. Div. 1967).

A seller who has surrendered possession of automobiles and has failed to obtain a signed security agreement cannot enforce his security interest as against third parties. McDonald v. Peoples Auto. Loan & Fin. Corp. of Athens, Inc., 115 Ga. App. 483, 154 S.E.2d 886 (1967).

26. Priority.

Because under Miss. Code Ann. §§ 75-9-203, 75-9-322, the first perfected security interest had priority, plaintiff, a receiver for the receivership entities, on behalf of the entities' creditor who filed first, had priority over a state tax lien such that defendant state taxing authority's distress warrants issued against the entities' accounts receivable were quashed. Nabers v. Morgan, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 10504 (S.D. Miss. Feb. 2, 2011).

In action by finance corporation against bank involving conflicting security interests in same automobile, where (1) dealer's invoice recited sale of automobile to wife and provided that she would pay $1,400 down and finance balance with plaintiff, (2) wife and husband executed (a) promissory note evidencing loan in amount of $2,995 from defendant, of which $1,400 was used as down payment for automobile and balance represented preexisting debt owed to defendant, and (b) security agreement which designated automobile as security for such loan, (3) husband, on giving dealer $1,400 down payment for automobile, executed installment sale contract in husband's name only in favor of dealer, which dealer assigned to plaintiff, (4) defendant on August 9, 1972 filed financing statement that designated both husband and wife as debtors, (5) plaintiff on August 10, 1972 filed financing statement that designated only husband as debtor, (6) husband defaulted on payments due plaintiff, and (7) both husband and wife defaulted on note given to defendant, court held (1) installment sale contract assigned to plaintiff served as security agreement under UCC § 9-203(1)(b) and plaintiff acquired valid security interest in automobile, (2) plaintiff's security interest in automobile validly attached under UCC § 9-204(1), since husband had "right" in automobile as matter of law and could use it for collateral, even though wife was vehicle's registered owner, (3) under UCC § 9-402(1) and § 9-105(1)(d) financing statement filed by plaintiff was defective, since it only listed husband as "debtor" and did not refer to wife who actually owned automobile, (4) defendant's security interest validly attached when both husband and wife signed security agreement granting security interest in automobile to defendant, (5) defendant's financing statement complied with UCC § 9-402(1), since it was signed by both husband and wife, and thus defendant's security interest in automobile was perfected, and (6) since defendant gave "value" under UCC § 1-201(44)(b) by taking security interest in automobile to secure defendant's preexisting claim, defendant's perfected security interest in vehicle extended to entire amount of defendant's loan to husband and wife, and such perfected security interest was superior to plaintiff's unperfected security interest. GMAC v. Washington Trust Co., 120 R.I. 197, 386 A.2d 1096, 3 A.L.R.4th 496 (1978).

Where buyer of motorcycle signed security agreement which contained description of collateral, buyer agreed that security interest attach to vehicle, value was given by bank which advanced part of purchase price, and title to vehicle and physical possession were given to buyer by seller, whereby buyer acquired rights in collateral, security interest of bank attached pursuant to provisions of UCC §§ 9-203 and 9-204, notwithstanding seller's failure to record bank's lien as required by seller's contract with bank; thus, upon buyer's default, bank had right to possession of collateral pursuant to UCC § 9-503, notwithstanding nonrecordation of its lien, and seller was not liable to bank for breach of contract to record lien since loss was caused by bank's failure to act and by buyer's flight and his concealment of motorcycle, not by seller's breach. Kansas State Bank v. Overseas Motosport, Inc., 222 Kan. 26, 563 P.2d 414 (1977).

Delivery of appliances subject to security agreement to construction site for use in debtor's apartment construction project was sufficient to give debtor rights in such collateral for purposes of UCC § 9-203(2). In re County Green Ltd. Partnership, 438 F. Supp. 693 (W.D. Va. 1977).

UCC does not abrogate, modify, affect or abridge the equitable doctrine of subrogation and, thus, surety on subcontractor's bond was not required to file under UCC Article 9 in order to preserve its priority based on subrogation. Argonaut Ins. Co. v. C & S Bank, 140 Ga. App. 807, 232 S.E.2d 135 (1976).

Contractor had rights in funds retained by city under construction contract, notwithstanding contract conditioned payment of retainage upon contractor's first paying all subcontractors and materialmen and contractor had not made all such payments; thus bank's security agreements were sufficient to give it security interest in retained funds, which had been assigned to bank, superior to that of general creditors. Corpus Christi Bank & Trust v. Smith, 525 S.W.2d 501 (Tex. 1975).

Where buyer paid for used automobiles with check which was dishonored after buyer executed "trust receipts" agreement which specified that bank would hold security interest in automobiles as collateral for loan, bank had unperfected security interest in automobiles which was superior to seller's right to reclaim cars, seller's remedy being an action against buyer for price of delivered goods under Code § 2-709. Guy Martin Buick, Inc. v. Colorado Springs Nat'l Bank, 32 Colo. App. 235, 511 P.2d 912 (1973), aff'd, 184 Colo. 166, 519 P.2d 354 (1974).

The perfected security interest of a retail finance corporation who purchased a credit agreement signed by a "buyer in the ordinary course of business" from an automobile dealer had priority over the perfected interests of a bank which furnished floor plan financing to finance the dealer's acquisition and holding of motor vehicles for use and resale in the course of the dealer's business. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

27. Proceeds.

Insurance monies paid for loss of collateral by theft are "proceeds" within meaning of UCC § 9-306(1). Insurance Mgt. Corp. v. Cable Servs., Inc., 359 So. 2d 572 (Fla. App. 1978).

Proceeds from disposition of pledged bonds in excess of amount owed to creditors, who had security interests under UCC §§ 9-203 and 9-204, belonged under UCC §§ 9-502 and 9-504 to debtors, and creditors were not entitled to retain entire collateral under UCC § 9-505 in absence of compliance with notice requirement under UCC § 9-505. Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976).

28. Writing requirement.

Under UCC §§ 9-203(1) and 9-204(1), there are four basic requirements to the creation of a valid security interest: (1) a security agreement must be entered into, (2) the agreement must be in writing or the creditor must be in possession of the collateral, (3) the debtor must have rights in the collateral, and (4) the secured party must give value. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978).

Alleged security interest in stock was unenforceable under UCC § 9-203(1) where (1) creditor's petition in intervention alleged that stock was in debtor's possession and (2) creditor's deposition admitted that no written security agreement had ever been executed by debtor. Stromblad v. Wilderness Adventurer, Inc., 577 P.2d 918 (Okla. Ct. App. 1978).

The steps that must be taken as a prerequisite to the creation of a security interest that is enforceable against the debtor are stated in UCC §§ 9-203(1)(a) and (b) and 9-204(1) and may be summarized as follows: (1) the parties must enter into a security agreement; (2) they must reduce as much of that agreement to writing as is necessary to satisfy UCC § 9-203(1)(b), which also requires that the debtor sign such writing, or else possession of the collateral must be given to the creditor; (3) the debtor must acquire rights in the collateral; and (4) the secured party must give value. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

An agreement that a security interest attach must be in writing under UCC § 9-203. In re Dean & Jean Fashions, Inc., 329 F. Supp. 663 (W.D. Okla. 1971).

There cannot be a security interest in collateral in the possession of the debtor which will be valid as against subsequent claimants unless there is a signed written security agreement, which in effect is a statute of frauds requirement. McDonald v. Peoples Auto. Loan & Fin. Corp. of Athens, Inc., 115 Ga. App. 483, 154 S.E.2d 886 (1967).

Bank which could proffer no writing signed by debtor giving, even sketchily, terms of security agreement could not, under Code § 9-203(1)(b), enforce security interest in debtor's personalty as against levying judgment creditor. Mid-Eastern Elecs., Inc. v. First Nat'l Bank, 380 F.2d 355 (4th Cir. Md. 1967).

Trust receipts meet the minimum requirements of the UCC where they are writings signed by the debtor granting security interests in specifically described merchandise to the distributor. In re United Thrift Stores, Inc., 363 F.2d 11 (3d Cir. N.J. 1966).

29. —Formal requirements.

Under UCC § 9-203(1) and (2), debtor's option to purchase motor grader from third party, when exercised, gave rise to property right in grader in which debtor could create security interest, since Uniform Commercial Code does not require debtor to have rights in collateral at time security agreement is made. If debtor does not have rights in collateral at time security agreement is made, creditor's security interest simply remains unenforceable until at some future time all events of attachment (agreement, value given, and debtor's rights in collateral) occur. Empire Mach. Co. v. Union Rock & Materials Corp., 119 Ariz. 145, 579 P.2d 1115 (Ct. App. 1978).

Where enforceable security interest is created by written agreement which is terminable at specified date, security interest is valid only until expiration date; thereafter, in order for there to be enforceable security interest, new security agreement must be executed. Bewigged by Suzzi, Inc. v. Atlantic Dep't Stores, Inc., 49 Ohio App. 2d 65, 359 N.E.2d 721 (1976).

Where supplier sold truck body kits to debtor, but debtor failed to pay for kits, where bank loaned money to debtor and filed financing statement which listed body kits as collateral, but no separate written security agreement was entered into between bank and debtor, and where body kits were subsequently sold back to supplier and consigned to debtor under agreement giving supplier security interest in kits and supplier filed financing statement covering body kits, bank's financing statement was not effective as security agreement, as required by UCC § 9-203(1)(b), since it did not contain language which specifically created or granted security interest in described collateral. Transport Equip. Co. v. Guaranty State Bank, 518 F.2d 377 (10th Cir. Kan. 1975).

Financing statement which was in writing, signed by debtor, adequately described collateral, and which incorporated security agreement under UCC § 9-105(h) met requirement of UCC § 9-203(1)(b) that debtor must sign security agreement containing description of collateral. First Nat'l Bank & Trust Co. v. Olivetti Corp. of Am., 130 Ga. App. 896, 204 S.E.2d 781 (1974).

Where first section of security agreement on SBA form did not refer to classifications of collateral listed in second section but granted security interest in borrower-debtor's equipment, furniture, and fixtures, fact that second section boxes labeled inventory, accounts receivable, and contract rights were checked did not give security interest therein. Mitchell v. Shepherd Mall State Bank, 458 F.2d 700 (10th Cir. Okla. 1972).

In an action for conversion by seizure and sale of property covered by security agreement allegedly void presented triable issues of fact as to the validity of the agreement, precluding summary judgment, where agreement was undated, did not specify the amount of the debt, or the terms of repayment and was signed by an individual in his own name and not in his capacity as an officer of the debtor corporation but the agreement did name the debtor corporation in the body thereof, listed the collateral covered by it, and the individual signing it was in fact the president of the debtor authorized to sign. Cherno v. Bank of Babylon, 57 Misc. 2d 801 (1968).

30. —Formal requirements; signature.

Security interest is not rendered invalid by lack of collateral owner's signature on financing statement where name and signature of debtor are present, since minor errors which are not seriously misleading are excused. United States Small Bus. Admin. v. Guaranty Bank & Trust Co., 874 F.2d 997 (5th Cir. 1989).

Security agreement was valid under UCC § 9-203, although it was signed before description of collateral was inserted, where description of collateral was subsequently written into agreement so that it accurately reflected intent of both parties. In re Allen, 395 F. Supp. 150 (E.D. Ill. 1975).

Purpose of filing financing statement is notice to any third party; and requirement of description of collateral is satisfied if description reasonably informs third parties that certain identifiable item belonging to or in possession of debtor may be subject to prior security interest and that further inquiry is necessary to determine if it is exact item being offered them as collateral. Associates Capital Corp. v. Bank of Huntsville, 49 Ala. App. 523, 274 So. 2d 80 (Civ. App. 1973).

In transaction where lease is intended as security, debtor must sign written instrument (so-called lease) describing collateral in order to comply with Ohio version of UCC § 9-203; language to effect that security interest is being created or provided for need not be included. In re Walter W. Willis, Inc., 30 Ohio Misc. 75, 313 F. Supp. 1274 (N.D. Ohio 1970), aff'd, 440 F.2d 995 (6th Cir. 1971).

Purchase money security interest is not enforceable until after certain security agreements are signed by debtor, but fact that agreements were not signed until after installation of equipment and thus not enforceable at time of installation, did not prevent attachment of security interest at time of installation. Honea v. Laco Auto Leasing, Inc., 80 N.M. 300, 454 P.2d 782 (Ct. App. 1969).

Security agreement which named the debtor corporation in the body thereof, listed the collateral covered by it, and the individual signing it was in fact the president of the debtor authorized to sign by resolution on file with the bank, and was signed on a line preceded by the word "by" with corporate seal affixed, raised issues as to the validity of the security agreement sufficient to defeat a motion for summary judgment although the agreement was undated, did not specify the amount of the debt, nor the terms of repayment and was signed by the individual in his own name and not in his capacity as an officer of the debtor corporation. Cherno v. Bank of Babylon, 57 Misc. 2d 801 (1968).

Trust receipts meet the minimum requirements of the UCC where they are writings signed by the debtor granting security interests in specifically described merchandise to the distributor. In re United Thrift Stores, Inc., 363 F.2d 11 (3d Cir. N.J. 1966).

Purpose of filing financing statement is notice to any third party; and requirement of description of collateral is satisfied if description reasonably informs third parties that certain identifiable item belonging to or in possession of debtor may be subject to prior security interest and that further inquiry is necessary to determine if it is exact item being offered them as collateral. Associates Capital Corp. v. Bank of Huntsville, 49 Ala. App. 523, 274 So. 2d 80 (Civ. App. 1973).

Trust receipts meet the minimum requirements of the UCC where they are writings signed by the debtor granting security interests in specifically described merchandise to the distributor. In re United Thrift Stores, Inc., 363 F.2d 11 (3d Cir. N.J. 1966).

RESEARCH REFERENCES

ALR. Construction of §§ 301 and 700 of Soldiers' and Sailors' Civil Relief Act of 1940, as amended, relating to instalment contracts for purchase of property. 24 A.L.R.2d 1074.

Sufficiency of description of crops under UCC §§ 9-203(1)(b) and 9-402(1). 67 A.L.R.3d 308.

Sufficiency of description of collateral in security agreement under UCC §§ 9-110 and 9-203. 100 A.L.R.3d 940.

Sufficiency of debtor's signature on security agreement or financing statement under UCC §§ 9-203 and 9-402. 3 A.L.R.4th 502.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 221, 223-233.

78 Am. Jur. 2d, Warehouses § 59.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:9 (instruction to jury; transaction subject to other regulatory statutes).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:73 (sufficiency of description; "Proceeds").

6 Am. Jur. Pl & Pr Forms (Rev), Secured

Transactions, Forms 9:182, 9:183, 9:184 (enforceability of interest; formal requisites).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:201 (instruction to jury; when security interest attaches; execution of security agreement or possession of collateral by creditor).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:214 (when security interest attaches; after-acquired property; instruction to jury; execution of security agreement; existence of goods).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1697 through 253:1976 (general effectiveness of security agreement; enforceability of security interest).

CJS. 79 C.J.S., Secured Transactions §§ 34-49.

72 C.J.S., Pledges §§ 3, 19-21.

93 C.J.S., Warehousemen and Safe Depositaries §§ 65-72.

Law Reviews. The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 75-9-204. After-acquired property; future advances.

(a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten (10) days after the secured party gives value; or

(2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-204.

A. Generally.

6. In general.
7. Creation of security interest.
8. Agreement requirement.
9. —Existence of agreement.
10. —Sufficiency of agreement.
11. Priority.
12. —Bankruptcy as affecting priority.
13. "Rights in collateral."
14. —Documents of title.
15. —Possession.
16. —What constitutes; creation.
17. —Particular applications.
18. "Value given."
19. —Credit.
20. —Other consideration.
21. Miscellaneous.

B. After-Acquired Property.

22. In general.
23. Bankruptcy as affecting.
24. Conditional sale as affecting.
25. "Floating lien."
26. Intent.
27. Language creating coverage.
28. Priority.
29. 10-day rule generally.
30. Truth-In-Lending Act.
31. —Violation of 10-day rule.

32. —Not violative of 10-day rule.
33. Miscellaneous.

C. Future Advances.

34. In general.
35. Intent.
36. Language creating coverage.
37. Novation distinguished.
38. Particular applications.

D. Particular Collateral.

39. Accounts receivable.
40. Inventory.
41. —Attachment, perfection, priority.
42. —Particular applications.
43. Livestock.
44. Proceeds.
45. Replacement goods.

III. Pre-Uniform Commercial Code Decisions.

46. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-204.

A. Generally.

6. In general.

While both the time of filing rule and the time of attachment rule have merit, neither rule furthers the important policy of providing notice to subsequent creditors of the prior existing security interest as well as a rule based upon the last event; by requiring that the determination of the proper place to file be made at the time when the last event occurs upon which the perfection of the creditor's security interest is based, the last event rule insures that the place in which the filing is made and the contents of the filing will reflect any changes made by the debtor between the time of attachment and the time of filing, regardless of which came first. The filer would be more likely to reflect the location and status of the debtor which exists at the time a subsequent creditor is searching the records to determine what prior security interests have been perfected against the debtor and therefore will be more likely to be found by such a subsequent creditor. Accordingly, the secured party must determine the correct place in which to file his financing statement on the basis of the facts existing at the time when the last event necessary for the perfection of his security interests occurs. Matter of Hammons (C.A.5 (Miss.) 1980) 614 F. 2d 399

Where there is no authority to subject property to a security interest, the creditor has no security interest therein. Branch v. Steph, 389 F.2d 233 (10th Cir. Okla. 1968).

If any element specified by Sec 9-204(1) is not satisfied the security interest is not perfected. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

Subsection (3) of § 9-204 is not irreconcilable with subsection (2) of § 9-108. Erb v. Stoner, 19 Pa. D. & C.2d 25 (1959).

7. Creation of security interest.

In an action by a bank against a purchaser of truck bodies to obtain monies paid by the purchaser to the Internal Revenue Service after the IRS had issued a tax levy against funds owing to the seller of truck bodies, the trial court properly granted judgment for the bank where the contract between the seller and the purchaser had been delivered, assigned and accepted by the bank to secure a loan to the seller and, thereby, gave the bank a perfected security interest in the contract, an instrument under § 75-9-105, which held priority over the tax lien of the IRS which had never been filed at the principal place of business of the taxpayer. International Harvester Co. v. Peoples Bank & Trust Co., 402 So. 2d 856 (Miss. 1981).

Where creditor and debtor agreed to postpone time of attaching of creditor's security interest in debtor's collateral until event of default should occur, creditor under UCC § 9-204(1) had no security interest in collateral until event of default occurred. Allegaert v. Chemical Bank, 454 F. Supp. 341 (E.D.N.Y. 1978), rev'd on other grounds and remanded, 657 F.2d 495 (2d Cir. N.Y. 1980).

In debtor's action against bank for conversion of certificate of deposit, which was issued by bank to debtor and constituted collateral for loan made to debtor by corporation affiliated with bank, where evidence showed (1) that debtor had borrowed $8,000,000 from such affiliated corporation to develop real estate project,

(2) that part of loan's proceeds had been set aside as reserve fund to pay interest on debtor's note and also taxes, fees, and other assessments on property being developed, (3) that lender corporation had requested debtor to purchase, from amount loaned, a $200,000 certificate of deposit from defendant bank and pledge it with lender to supplement such reserve fund, (4) that debtor had purchased certificate and requested bank to deliver it to lender to hold under a pledge agreement, which actually was never executed, (5) that certificate had been renewed frequently during following three years, (6) that lender's correspondence concerning such renewals had repeatedly declared that certificate had been pledge to lender, and that debtor at no time had disputed such statements, and (7) that bank refused to deliver certificate to debtor after lender, in order to supplement reserve fund, had instructed bank to cash certificate and apply proceeds to lender's account, court held (1) that conduct of lender and debtor showed that they had intended to enter into security agreement under which certificate would be pledged to lender, (2) that since lender had possession of certificate (i.e., the collateral), fact that such security agreement was oral did not affect its validity, since UCC § 9-203(1)(a) was intended to permit oral security agreements if creditor was in possession of collateral, (3) that under UCC § 9-204(1), a security agreement attaches as soon as parties so agree, creditor gives value, and debtor has rights in collateral, (4) that fact that debtor's letter to bank concerning issuance of certificate had referred to written pledge agreement to be prepared in future did not amount to explicit instruction that security interest was not to attach until parties' oral agreement had been reduced to writing, and (5) even if written security agreement actually had been condition to creation of lender's security interest in certificate, debtor's subsequent conduct had waived such condition, and he was estopped to assert it. Barton v. Chemical Bank, 577 F.2d 1329 (5th Cir. Ga. 1978).

Where (1) debtor sold corporate stock on July 25, 1974 to defendants for $180,000, and defendants executed promissory notes under pledge agreement securing payment of stock's purchase price and delivered notes to escrowee, which also received the purchased stock, (2) debtor on March 19, 1975, with knowledge and consent of defendants and escrowee, assigned notes to creditor as collateral to secure payment of prior $60,000 debt, indorsed them to creditor's order, and delivered them to creditor which retained possession of them until August 24, 1976, a date following date on which debtor had fully debt due creditor, (3) on November 5, 1975, when defendants still owed debtor $135,000 on notes and notes were still in creditor's possession as collateral for payment of $28,000 balance then owed by debtor to creditor, debtor entered into agreement with plaintiff law firm and its client under which payments on prior debt owed by debtor to such client were extended, prospective lawsuit was settled, sums thus owe to client were collateralized by assignment of debtor's interest in stock-payment notes, and notes themselves and pledge agreement securing them were also assigned to plaintiff on behalf of its client, subject to prior collateral assignment in favor of debtor's first creditor, (4) first creditor on August 24, 1976 acknowledged to escrowee that debtor had fully discharged debt due it, delivered stock-payment notes in suit to plaintiff law firm, but never indorsed notes to plaintiff's order, (5) on August 25, 1976, plaintiff, defendants (purchasers of debtor's stock), debtor, and escrowee executed written acknowledgements of debtor's assignment of notes and pledge agreement to plaintiff, and plaintiff requested that it be paid next installment on notes, which was due on October 1, 1976, (5) on April 5, 1976, IRS assessed delinquent income-tax liability against debtor and filed notice of tax lien on August 4, 1976, (6) on October 1, 1976, escrowee paid installment payment due on notes to IRS, and (7) on October 5, 1976, plaintiff after due notice declared default on notes (because of failure to receive October 1, 1976 installment payment thereon) and under acceleration clause in notes demanded full payment thereof, court held (1) that plaintiff, as nominee for its client, acquired valid collateral assignment of proceeds of notes to extent that proceeds were not required to satisfy first creditor's prior security interest therein, (2) that under UCC § 3-202(3), debtor's indorsement and negotiation of notes to first creditor merely created partial assignment of notes' proceeds and did not divest debtor of ultimate right to all proceeds not required to satisfy debt owed to first creditor, (3) that debtor's remaining interest in notes' proceeds was the interest that debtor had assigned to plaintiff as collateral on November 5, 1975, and that such assignment, under UCC § 9-204(1), gave plaintiff valid security interest in debtor's residuary interest in notes' proceeds, (4) that plaintiff's security interest in notes' proceeds was not perfected until August 24, 1976, when it became perfected under UCC § 9-305 by possession of notes following first creditor's delivery thereof to plaintiff, (5) that IRS tax lien was not superior to plaintiff's perfected security interest in notes, since neither plaintiff nor its client had received any notice of such lien until September 20, 1976, and (6) that neither plaintiff not its client could accelerate unpaid balance due on notes, since plaintiff, as nominee for its client, was merely holder of security interest in notes and was not "holder" of notes within meaning of UCC § 1-201(20) because of first creditor's failure to indorse them to plaintiff's order. Lipkowitz & Plaut v. Affrunti, 95 Misc. 2d 849 (1978).

To obtain a valid security interest in collateral, the secured party must satisfy the following requirements of UCC § 9-204(1): (1) there must be an agreement between the secured party and the debtor that the secured party will have a security interest in the collateral, (2) the secured party must give value for the security agreement, and (3) the debtor must have rights in the collateral. First Westside Nat'l Bank v. Llera, 176 Mont. 481, 580 P.2d 100 (1978), overruled on other grounds, 259 Mont. 117, 855 P.2d 105 (1993).

The steps that must be taken as a prerequisite to the creation of a security interest that is enforceable against the debtor are stated in UCC §§ 9-203(1)(a) and (b) and 9-204(1) and may be summarized as follows: (1) the parties must enter into a security agreement; (2) they must reduce as much of that agreement to writing as is necessary to satisfy UCC § 9-203(1)(b), which also requires that the debtor sign such writing, or else possession of the collateral must be given to the creditor; (3) the debtor must acquire rights in the collateral; and (4) the secured party must give value. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

Under UCC § 9-204(1), (1) requirement that there must be "agreement" that security interest attach means that bargain of parties, from which security interest arises, must address itself to specific property or type of property, such as inventory; (2) requirement that "value" must be given for security interest is intended to insure that debtor giving security interest receive some consideration in return for substantial rights transferred to secured party; and (3) requirement that debtor acquire "rights" in collateral is satisfied by showing that debtor gained possession of collateral under agreement endowing him with any interest other than naked possession, such as debtor's own security interest in such collateral. Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

"Security interest" can be created without using those words, and here actions and conduct of parties, their testimony before referee in bankruptcy, and agreement as expressed in stipulation clearly established landlord's security interest in tenant-bankrupts' crops. Barney v. Rigby Loan & Inv. Co., 344 F. Supp. 694 (D. Idaho 1972).

For a lender to obtain a security interest in the inventory of a borrower there must be an agreement that it attach, that value be given, and the borrower has rights in the collateral. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

The conditions for a valid and enforceable security agreement under the Uniform Commercial Code are: (1) a written agreement signed by the debtor granting a security interest in collateral; (2) a description of the collateral; (3) value given by the secured party; and (4) debtor's rights in the collateral. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

8. Agreement requirement.

"Agreement" in UCC § 9-204(1) means bargain of the parties and is used in UCC § 9-204 instead of "security agreement," which has reference to written contract for security interest, since under UCC § 9-203(1), not all security interests need be based on written security agreement. Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

Under UCC § 9-204 a security interest does not attach until there is (1) agreement that it attach, (2) value is given, and (3) debtor has rights in collateral; thus, prospective purchaser of corporate stock did not acquire security interest therein where he executed promissory note for agreed price and his note together with share certificates were placed in possession of third party for safekeeping under agreement that certificates, already made out in prospective purchaser's name, would be delivered to him when note was paid, since evidence failed to establish an agreement, either oral or written, which would give rise to implication that security interest in stock was ever created; furthermore, under UCC §§ 8-301 and 8-313 there was no evidence that prospective purchaser received any rights in stock which was alleged to have served as collateral, since there was no evidence of delivery to prospective purchaser or his agent and the fact that stock was issued in his name was insufficient to establish delivery. McCorquodale v. Holiday, Inc., 90 Nev. 67, 518 P.2d 1097 (1974).

A letter written by a subcontractor to his general contractor advising the latter of the assignment of his account for work performed to a bank, the written acceptance of the letter by the addressee, and the fact that the bank loaned money to the subcontractor taking the letter assignment as collateral, created a valid security interest which did not have to be perfected by the filing of a financing statement. Citizens & S. Nat'l Bank v. Capital Constr. Co., 112 Ga. App. 189, 144 S.E.2d 465 (1965).

9. —Existence of agreement.

Although bank on specified date prior to making loan had possession of securities of borrower, who wanted to use such securities as collateral for proposed loan, no agreement under UCC § 9-204(1) arose between the parties that bank should have security interest in such securities until date on which bank accepted collateral note executed by borrower and bound itself to lend borrower amount of money provided for in collateral note. Florida Nat'l Bank v. State ex rel. Department of Ins., 350 So. 2d 365 (Fla. App. 1977).

In action by seller to recover ring, where ring was mailed to buyer with conditional sales agreement, where buyer called seller and approved ring, where buyer gave ring to wife as gift, where buyer subsequently signed conditional sales contract and then defaulted on payments, and where wife gave ring as security for payment of promissory note, seller's security interest was superior to interest of wife and interest of party taking ring as security for note; security interest of seller attached within meaning of UCC § 9-204 at time of buyer's receipt and verbal approval of ring, even though security interest was not enforceable against buyer under UCC § 9-203(1) until buyer subsequently signed conditional sales agreement. Mayor's Jewelers of Ft. Lauderdale, Inc. v. Levinson, 39 Ill. App. 3d 16, 349 N.E.2d 475 (2d Dist. 1976).

Promissory notes which contained no language expressly or by implication granting to seller lien or interest in automobile as security for repayment of loan, but merely contained reference to automobile by make, year and serial number, did not constitute security agreement and did not create security interest in seller; and deficiency could not be supplied by notation contained in certificate of ownership designating seller as "secured party." First County Nat'l Bank & Trust Co. v. Canna, 124 N.J. Super. 154, 305 A.2d 442 (App. Div. 1973).

Seller of internal equipment to be used as saw mill had security interest in equipment which attached before equipment became fixtures attached to saw mill, notwithstanding fact that sales contract was signed four days after equipment had been delivered and installed; thus, under Code § 9-313 seller had priority over saw mill mortgagee. GECC v. Pennsylvania Bank & Trust Co., 56 Pa. D. & C.2d 479 (1972).

Fact that all of parties entered into performance of agreements on date of execution and continued in faithful performance according to terms of agreements for period of over 14 months is convincing proof that they intended their respective interests attach upon execution of agreements. Stanley v. Fabricators, Inc., 459 P.2d 467 (Alaska 1969).

10. —Sufficiency of agreement.

Security interest of creditor in stock placed in escrow to secure loan attached at time of execution of pledge and escrow agreement; provisions of security agreement specifying certain contingencies upon default before escrow company could deliver stock to creditor did not constitute explicit agreement to postpone attachment of the security interest within meaning of UCC § 9-204(1). In re Copeland, 531 F.2d 1195 (3d Cir. Del. 1976).

Bank did not have security interest in equipment in debtors possession under agreement which provided, inter alia, that "the said bank shall also have a lien...upon all property of the undersigned of every name and nature whatsoever, delivered to the Bank for safekeeping or otherwise...," where agreement provided in detailed and meticulous manner that debtor's property in bank's possession should be loan collateral; clause in question was ambiguous and, since document was drafted by bank, it would be construed against bank. National Ropes, Inc. v. National Diving Serv., Inc., 513 F.2d 53 (5th Cir. Fla. 1975).

Where notes representing security agreement did not refer to after acquired collateral as collateral, reference to such collateral in financing statement cannot be basis for creation of security interest therein under UCC § 9-204(3). Tri-County Livestock Auction Co. v. Bank of Madison, 228 Ga. 325, 185 S.E.2d 393 (1971), on remand, 125 Ga. App. 126, 186 S.E.2d 542 (1971).

11. Priority.

Where buyer of motorcycle signed security agreement which contained description of collateral, buyer agreed that security interest attach to vehicle, value was given by bank which advanced part of purchase price, and title to vehicle and physical possession were given to buyer by seller, whereby buyer acquired rights in collateral, security interest of bank attached pursuant to provisions of UCC §§ 9-203 and 9-204, notwithstanding seller's failure to record bank's lien as required by seller's contract with bank; thus, upon buyer's default, bank had right to possession of collateral pursuant to UCC § 9-503, notwithstanding nonrecordation of its lien, and seller was not liable to bank for breach of contract to record lien since loss was caused by bank's failure to act and by buyer's flight and his concealment of motorcycle, not by seller's breach. Kansas State Bank v. Overseas Motosport, Inc., 222 Kan. 26, 563 P.2d 414 (1977).

Where seller of cattle received notes, signed by debtor, with notations that they were secured by financing statements filed, describing collateral and signed by both debtor and secured party, secured party did not have perfected security interest in collateral described in financing statement since no security agreement was signed granting security interest in collateral. Barth Bros. v. Billings, 68 Wis. 2d 80, 227 N.W.2d 673 (1975).

In action between lender who held unperfected security interest in automobiles and car dealer who sold collateral to debtor, seller's right to reclaim goods under UCC § 2-702(3), when buyer's check for purchase price was dishonored by bank, did not have priority over lender's unperfected security interest in automobiles which arose when lender, who qualified as "purchaser" under UCC § 1-201, acquired certificates of title; under UCC § 2-403(1), once certificates of title were delivered, debtor acquired voidable title and could convey enforceable right in automobiles to lender as good faith purchaser for value, even though debtor's check to seller of automobiles was later dishonored. Guy Martin Buick, Inc. v. Colorado Springs Nat'l Bank, 184 Colo. 166, 519 P.2d 354 (1974).

Creditor's security interest in accounts of joint venture attached under UCC § 9-204 but was not perfected under UCC § 9-302(1) and was subordinated to federal tax lien where only financing statement filed covered earlier loan to one joint venturer and did not give notice to potential creditors of joint venture that security interest was in existence against joint venture. United States v. Merchants & Marine Bank, 292 So. 2d 151 (Miss. 1974).

Lack of perfection of security interest under Article 9 of UCC relates only to priority over other creditors' interests in collateral, and security agreement as between parties themselves and secured party's rights over collateral as against debtor are unaffected by failure to perfect security interest; thus, assignee for security purposes of beneficial interest in land trust was entitled to redeem from tax sale of real estate which comprised corpus of trust notwithstanding his failure to perfect security interest by filing financing statement. Application of County Treasurer of Du Page County, 16 Ill. App. 3d 385, 306 N.E.2d 743 (2d Dist. 1973).

Where neither party has perfected his security interest, UCC § 9-312(5) determines priority between conflicting interests in same collateral; thus, where plaintiff-landlord had lien on tenant's property under terms of recorded lease which was valid under UCC § 9-204(3), but which was not perfected due to plaintiff's failure to file financing statement with secretary of state as required by UCC § 9-401(1)(c), and where defendant sold bar equipment to plaintiff's tenants under conditional sales contract and acquired purchase money security interest under UCC § 9-107(a), which was not perfected under UCC § 9-302(1) since defendant failed to obtain signatures of parties as required by UCC § 9-402(1), and where defendant subsequently repossessed and sold property in question, defendant's security interest took priority over plaintiff's either under theory that defendant perfected its security interest by repossessing and selling property or under theory that defendant's security interest attached prior to plaintiff's. Engelsma v. Superior Prods. Mfg. Co., 298 Minn. 77, 212 N.W.2d 884 (1973).

Bank which had acquired prior a perfected security interest in all the present and future inventory of a lumber company had a lien superior to that of the seller of standing timber who had a lien, under an oral agreement, on the lumber manufactured as the trees were severed. Barry v. Bank of N.H., 112 N.H. 226, 293 A.2d 755 (1972).

12. —Bankruptcy as affecting priority.

Where manufacturing company, which had been making gun cabinets for another company under contract providing that such other company would furnish basic materials for cabinets, that it reserved title to such materials, and that it would buy assembled cabinets from manufacturer at reduced price, became insolvent and ceased operations after obtaining Small Business Administration loan from two banks that required manufacturer to execute security agreement in their favor in manufacturer's present and after-acquired inventory, and where such banks, after perfecting their security interests in such inventory by filing financial statements that were proper in form, content, and place of filing, attempted to enforce such security interests by taking possession of manufacturer's inventory, as against asserted interest therein of company supplying materials to manufacturer, (1) interest of supplier of materials was purchase-money security interest under UCC § 9-107(b); (2) such interest was not perfected under UCC § 9-304 by filing of financing statement concerning such materials and giving notice of claim thereto; and (3) under UCC § 9-312(3), such unperfected interest had no priority over perfected security interests of banks in such materials (which were part of manufacturer's inventory), where security interests of banks had properly attached under UCC § 9-204(1). Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

Under secured note issued 6 months prior to bankruptcy covering both overdue and future accounting services, value was not given until work was actually performed, and claim for services rendered within 4 months of bankruptcy was not entitled to secured status. E.F. Corp. v. Smith, 496 F.2d 826 (10th Cir. Kan. 1974).

Where party to sale of stock intended that no security interest would be capable of attaching until event of uncured default in buyer's payments, no pledge was created as of date sale was transacted, and uncured default did not occur at time buyer filed reorganization petition, seller did not possess perfected security interest and did not have claim to stock superior to that of trustee in bankruptcy. In re Dolly Madison Indus., Inc., 351 F. Supp. 1038 (E.D. Pa. 1972), aff'd, 480 F.2d 917 (3d Cir. Pa. 1973), aff'd, 480 F.2d 918 (3d Cir. Pa. 1973).

13. "Rights in collateral."

In action by finance corporation against bank involving conflicting security interests in same automobile, where (1) dealer's invoice recited sale of automobile to wife and provided that she would pay $1,400 down and finance balance with plaintiff, (2) wife and husband executed (a) promissory note evidencing loan in amount of $2,995 from defendant, of which $1,400 was used as down payment for automobile and balance represented preexisting debt owed to defendant, and (b) security agreement which designated automobile as security for such loan, (3) husband, on giving dealer $1,400 down payment for automobile, executed installment sale contract in husband's name only in favor of dealer, which dealer assigned to plaintiff, (4) defendant on August 9, 1972 filed financing statement that designated both husband and wife as debtors, (5) plaintiff on August 10, 1972 filed financing statement that designated only husband as debtor, (6) husband defaulted on payments due plaintiff, and (7) both husband and wife defaulted on note given to defendant, court held (1) installment sale contract assigned to plaintiff served as security agreement under UCC § 9-203(1)(b) and plaintiff acquired valid security interest in automobile, (2) plaintiff's security interest in automobile validly attached under UCC § 9-204(1), since husband had "right" in automobile as matter of law and could use it for collateral, even though wife was vehicle's registered owner, (3) under UCC § 9-402(1) and § 9-105(1)(d), financing statement filed by plaintiff was defective, since it only listed husband as "debtor" and did not refer to wife who actually owned automobile, (4) defendant's security interest validly attached when both husband and wife signed security agreement granting security interest in automobile to defendant, (5) defendant's financing statement complied with UCC § 9-402(1), since it was signed by both husband and wife, and thus defendant's security interest in automobile was perfected, and (6) since defendant gave "value" under UCC § 1-201(44)(b) by taking security interest in automobile to secure defendant's preexisting claim, defendant's perfected security interest in vehicle extended to entire amount of defendant's loan to husband and wife, and such perfected security interest was superior to plaintiff's unperfected security interest. GMAC v. Washington Trust Co., 120 R.I. 197, 386 A.2d 1096, 3 A.L.R.4th 496 (1978).

Under UCC § 9-204(1), debtor must have rights in collateral before secured party can acquire security interest in debtor's property. This requirement is fundamental, and a security interest cannot be created in any other property. Anthony v. Community Loan & Inv. Corp., 559 F.2d 1363 (5th Cir. Ga. 1977), reh'g denied, 564 F.2d 416 (5th Cir. Ga. 1977).

Under UCC § 9-204, no one can give a valid security interest in property unless he has rights therein. Texas State Bank v. Foremost Ins. Co., 477 S.W.2d 652 (Tex. Civ. App. 1972), ref. n.r.e (June 28, 1972).

14. —Documents of title.

Defendant finance company did not acquire security interest in two vehicles superior to that of plaintiff bank, by virtue of automobile dealer's execution and filing of inventory security agreements in favor of the defendant covering vehicles, where vehicles had originally been sold by dealer and conditional sales contracts were assigned to plaintiff subject to recourse contract with dealer, where plaintiff had at all times had possession of certificates of ownership for vehicles and was listed as legal owner thereon, where dealer had possession of vehicles as result of their repossession by plaintiff pursuant to recourse agreement following purchasers' defaults, and where plaintiff had demanded, unsuccessfully, that dealer pay balance due on conditional sales contracts as provided by recourse agreement; under UCC § 9-204, dealer, as debtor, did not acquire rights in subject motor vehicles sufficient to transfer valid security interest to defendant; nor could defendant, by advancing flooring money to dealer be considered buyer in ordinary course of business, but was rather financing agency only, excluded from protection created by UCC § 9-307. Mother Lode Bank v. GMAC, 46 Cal. App. 3d 807 (3d Dist. 1975).

Party who came into possession of manufacturer's certificate for mobile home could not thereby become debtor with rights in collateral under UCC § 9-204(1) where the certificate at all times indicated that ownership was transferred from manufacturer to a third party. Texas State Bank v. Foremost Ins. Co., 477 S.W.2d 652 (Tex. Civ. App. 1972), ref. n.r.e (June 28, 1972).

15. —Possession.

Where used car dealer purchased and took possession of three automobiles, but checks given in payment were dishonored, title to automobiles did not pass to used car dealer; thus, creditor of used car dealer could not acquire security interest in automobiles since UCC § 9-204 required debtor to acquire security interest in collateral before security interest could attach. Gicinto v. Credithrift of Am., No. 3, Inc., 219 Kan. 766, 549 P.2d 870 (1976).

Where debtor acquires possession of collateral under contract, he has acquired such rights in collateral as to allow security interest of his creditor to attach to collateral, regardless of who may be deemed to have title to and ownership of such collateral. First Nat'l Bank v. Smoker, 153 Ind. App. 71, 286 N.E.2d 203 (1972), reh'g denied, 153 Ind. App. 89, 287 N.E.2d 788 (1972).

Delivery of collateral to buyer pursuant to contract of sale satisfied Code § 9-204(1) condition that debtor have "rights" in collateral. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

Mere possession of goods does not constitute "rights in the collateral." Cain v. Country Club Delicatessen of Saybrook, Inc., 25 Conn. Supp. 327, 203 A.2d 441 (1964).

16. —What constitutes; creation.

Where creditor and debtor agreed to postpone time of attaching of creditor's security interest in debtor's collateral until event of default should occur, creditor under UCC § 9-204(1) had no security interest in collateral until event of default occurred. Allegaert v. Chemical Bank, 454 F. Supp. 341 (E.D.N.Y. 1978), rev'd on other grounds and remanded, 657 F.2d 495 (2d Cir. N.Y. 1980).

Rights in collateral as required by UCC § 9-204 for attachment of security interest can be created by estoppel, express or implied. Avco Delta Corp. Canada v. United States, 459 F.2d 436 (7th Cir. Ill. 1972).

Statute which specifies that security interest cannot attach until there is agreement that it attach and value is given and debtor has acquired rights and collateral, does not limit rights which debtor must have in such collateral to that of "ownership rights". Sussen Rubber Co. v. Hertz, 19 Ohio App. 2d 1, 249 N.E.2d 65 (1969).

17. —Particular applications.

In action for defendants' alleged conversion of collateral in which plaintiff had perfected security interest, question of fact existed as to whether third person, who had previously given defendants security interest in same collateral which defendants had perfected, had ever acquired any rights in such collateral as required by UCC § 9-204(1), and existence of such question required denial of plaintiff's motion for partial summary judgment. National Acceptance Co. of Am. v. Doede, 78 F.R.D. 333 (W.D. Wis. 1978).

When the holder of promissory notes assigned his interest therein as collateral to secure payment of a prior indebtedness, a sum less than the aggregate amount of the notes, and indorsed and delivered them to that creditor, he did not irrevocably divest himself of the ultimate right to all of the proceeds of the notes, but retained ownership of those proceeds not required to satisfy that indebtedness, and, therefore, the negotiation of all of the notes operated only as a partial assignment of the proceeds of the notes; the interest retained by him was capable of being transferred and, when it was transferred by another collateral assignment, the transferee acquired a valid security interest as to his residuary interest in the notes, which security interest was perfected by a subsequent delivery of the notes to it. Lipkowitz & Plaut v. Affrunti, 95 Misc. 2d 849 (1978).

Where dealer conveyed mobile home to buyer and assigned security instrument to bank, title vested in buyer and security interest remained in bank and, even though manufacturer's statement of origin was subsequently issued to dealer, it was not effective to convey any title or interest; since dealer had no rights in collateral, security interest of subsequent creditor who financed dealer's inventory and received manufacturer's statement of origin on mobile home in question, never attached under UCC § 9-204(1). C.I.T. Fin. Servs. Corp. v. First Nat'l Bank, 344 So. 2d 125 (Miss. 1977).

Where dealer was authorized to sell mobile home for owner, but manufacturer's certificate of origin was at all times in name of owner and had never been endorsed, dealer never obtained any rights in mobile home from owner to assign to bank, and dealer could not give bank valid security interest in mobile home by falsely stating that he had been authorized to pledge manufacturer's certificate to bank as security for loan. Texas State Bank v. Foremost Ins. Co., 477 S.W.2d 652 (Tex. Civ. App. 1972), ref. n.r.e (June 28, 1972).

18. "Value given."

Provision constituting limitation upon rights which seller or its financier might have had, could not and was not intended to confer new rights, and does not provide adequate substitute for "value" which would be necessary as independent basis for separate security interest to attach to goods and be effective against buyer. First Fin. Co. v. Akathiotis, 110 Ill. App. 2d 377, 249 N.E.2d 663 (1st Dist. 1969).

19. —Credit.

Under UCC § 9-204(1), "value" was given when claimant first extended credit to bankrupt pursuant to security agreement, and value was later given when claimant assumed bankrupt's indebtedness to third party, thereby creating a purchase money security interest in the property. In re King-Porter Co., 446 F.2d 722 (5th Cir. 1971).

Actual payment of purchase price is not required for attachment of security interest; binding commitment to extend credit meets "value" requirement, where commitment was acted upon, and, actual fulfillment, and time of fulfillment, of obligation to make payment are not determinative as to whether and when "value" was given. Honea v. Laco Auto Leasing, Inc., 80 N.M. 300, 454 P.2d 782 (Ct. App. 1969).

Value is advanced where a sale is made on credit. In re United Thrift Stores, Inc., 363 F.2d 11 (3d Cir. N.J. 1966).

20. —Other consideration.

Where (1) first corporation obtained financing from Texas bank for purchase of five airplanes, which it intended to resell, and Texas bank, in November, 1972, filed separate chattel mortgage for each plane with Federal Aviation Administration pursuant to federal law, (2) second corporation purchased the five planes from the first corporation and borrowed $18,000 from Kentucky bank on unsecured note to finance purchase, (3) second corporation, on default in payment for planes, entered into new agreement with first corporation for purchase of only one plane and return of other four, and also agreed not to file bill of sale with Federal Aviation Administration for plane purchased, (4) second corporation gave Kentucky bank, which held second corporation's unsecured note for $18,000, security agreement which secured repayment of note by encumbering single plane purchased, and bank, in exchange for such security agreement, agreed not to sue on note and filed both security agreement and bill of sale for plane with Federal Aviation Administration, (5) second corporation defaulted in making payments on plane, and first corporation foreclosed on plane and sold it at auction under authority of its November, 1972 security agreement with Texas bank, which security agreement had been assigned to first corporation on its repayment of amount that it owed Texas bank, and (6) second corporation's financer (Kentucky bank) sued first corporation for wrongful interference with its collateral by not respecting bank's lien on repossessed plane, court held (1) that Kentucky bank, under UCC 1-201(44)(b), gave "value" when it took security interest in plane purchased by second corporation to secure bank's preexisting claim against such corporation, (2) that by virtue of UCC § 9-204(1), Uniform Commercial Code does not require that "consideration" in strict-law sense be given as prerequisite for security interest to attach to collateral, (3) that Kentucky bank's security interest attached at time it gave value and was duly and properly perfected when bank filed instruments with Federal Aviation Administration, (4) that first corporation, under UCC § 1-201(37), had no valid security interest in plane that it repossessed and sold, since first corporation, by discharge of obligation underlying its security interest, had extinguished such security interest, and (5) that first corporation's foreclosure on, and sale of, plane was wrongful and in derogation of rights of plaintiff Kentucky bank, which held valid security interest in plane. Bank of Lexington v. Jack Adams Aircraft Sales, Inc., 570 F.2d 1220 (5th Cir. 1978).

In transaction whereby sole shareholder of small corporation sold all his shares of stock to third person and corporation participated in transaction with purchaser as comaker of promissory note and written security agreement relating to corporate shares and various physical assets of corporation, corporation's execution of promissory note and security agreement was supported by sufficient consideration since seller, as part of sale transaction, agreed to refrain from competition with corporation, granted corporation option to purchase building in which business was conducted, and promised to remain on corporation's board of directors. Miller's Shoes & Clothing v. Hawkins Furn. & Appliances, Inc., 300 Minn. 460, 221 N.W.2d 113, 71 A.L.R.3d 629 (1974).

Where for each of three loans, there was value given, there was written agreement between lender and debtor, there was collateral, and debtor had rights in collateral, there was attached security interest in each of loans. In re Rivet, 299 F. Supp. 374 (E.D. Mich. 1969).

21. Miscellaneous.

Security interests based on trust receipts attached when the agreements were made, value was given, and the debtor received possession of the collateral, and the security interests were perfected when they attached. In re United Thrift Stores, Inc., 242 F. Supp. 714 (D.N.J. 1965), aff'd, 363 F.2d 11 (3d Cir. N.J. 1966).

B. After-Acquired Property.

22. In general.

Fact that security agreement provided that retail store maintained security interest in all merchandise charged to account, even though operating as future advances and after acquired property clause, did not invalidate store's purchase money security interest in merchandise. In re Moody, 62 B.R. 282 (Bankr. N.D. Miss. 1986).

Security agreement which provided for security interest in specified items of household furniture and for security interest in "all additions and accessions" to such furniture did not apply, under UCC § 9-204(4)(b), to all of debtor's after-acquired furniture and household furnishings, since proper interpretation of phrase "additions and accessions," when read in context of security agreement and secured interest in specified items of household furniture, was that it only applied to "accessions"-that is, articles later required and physically attached to items of furniture listed as collateral in security agreement. Anderson v. Southern Disct. Co., 582 F.2d 883 (4th Cir. N.C. 1978).

There is nothing in the Uniform Commercial Code which limits security interests in after-acquired property to the debtor's equity in that property. GECC v. Town & Country Mobile Homes, Inc., 117 Ariz. 562, 574 P.2d 50 (Ct. App. 1977).

As a result of the enactment in Arizona of UCC § 9-204(3), dealing with after-acquired collateral, the validity of an after-acquired property clause in a security agreement is no longer open to question. GECC v. Town & Country Mobile Homes, Inc., 117 Ariz. 562, 574 P.2d 50 (Ct. App. 1977).

By virtue of the provision of subsection (3) of the instant section that "a security agreement may provide that collateral whenever acquired shall secure all obligations covered by the security agreement" after-acquired property may become subject to a security agreement when such property is delivered to the debtor. NCR v.

Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

23. Bankruptcy as affecting.

For "perfection" purposes under Florida law secured party's lien on after-acquired goods arose at time financing statement was filed, and transfer of such goods must be deemed as having occurred on that date for purposes of bankruptcy statute's provision as to preferential transfers subject to avoidance. Owen v. McKesson & Robbins Drug Co., 349 F. Supp. 1327 (N.D. Fla. 1972), aff'd, 486 F.2d 1401 (5th Cir. Fla. 1973).

For purposes of the Bankruptcy Act, an agreement securing a loan to a debtor giving the creditor a security interest in after-acquired inventory items of the debtor is by virtue of § 9-204(3) of the instant chapter considered to give the creditor a lien in the after-acquired items as of the time of the execution of the security agreement, which lien is superior to subsequently acquired liens of simple contract creditors and where the agreement was executed more than 4 months prior to the bankruptcy of the debtor, the security transaction did not constitute a preference as to items of inventory acquired within the 4-month period. The same result was reached alternatively under § 9-108 on the ground that the transfer of items of inventory as acquired would be considered to have been made for new value rather than as security for an antecedent debt, and hence no preference would result. Rosenberg v. Rudnick, 262 F. Supp. 635 (D. Mass. 1967).

24. Conditional sale as affecting.

The title of a conditional vendor to removable fixtures installed upon realty is superior to the lien of a prior mortgage containing the standard "after-acquired" property clause, but a conditional vendor is bound to refrain from wilfully impairing the security of a real estate mortgagee and if, without the consent of the mortgagee, he removes equipment subject to the mortgage, he should be required to account to the mortgagee for its fair value, and if the equipment which was replaced without the mortgagee's consent was serviceable and of some value, the priorities may appropriately be reversed to the extent of the impairment of the mortgagee's security. Blancob Constr. Corp. v. 246 Beaumont Equity, Inc., 23 A.D.2d 413 (1st Dep't 1965).

An unrecorded "conditional sales contract note" covering furniture, furnishings and carpeting furnished to a non-profit corporation created only an unperfected security interest, and an encumbrance created by a prior deed of trust containing an after-acquired property provision was superior to the rights created by such note. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

The rights of a creditor in after-acquired property under a security agreement, conferred by § 9-204(3) of the instant chapter are not affected, by virtue of § 9-202, by the fact, in and of itself, that the after-acquired property is delivered to the debtor under a conditional sales agreement by which title is retained by the seller. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

25. "Floating lien."

The "floating-lien" theory that all subsequently acquired property comes under the earlier security instrument is approved by UCC § 9-204(3). Babson Credit Plan, Inc. v. Cordele Prod. Credit Ass'n, 146 Ga. App. 266, 246 S.E.2d 354 (1978).

Where security agreement entered into between finance company and truck dealer to secure payment of all "floor-plan" advances made to dealer defined collateral as "new and used trucks" which were "to be purchased for inventory," and where such agreement assigned as security the "collateral" and "all proceeds thereof," a continuing relation was contemplated in which the finance company's lien extended to the collateral, as it might exist from time to time, until the indebtedness was satisfied. This is exactly what UCC § 9-204(3) intended. The section validates a security interest in the debtor's existing and future assets, even though the debtor has the right to use or dispose of collateral without being required to account for proceeds or to substitute new collateral. In expressly validating a "floating lien," UCC § 9-204(3) merely recognizes an existing state of things. Frankel v. Associates Fin. Servs. Co., 281 Md. 172, 377 A.2d 1166 (1977).

UCC § 9-204(3) recognizes validity of "floating lien" which arises whenever the parties agree, as UCC § 9-204(3) permits, that collateral, whenever acquired, shall secure all obligations covered by the security agreement. To create a "floating lien," the security agreement need not specifically employ the phrase "after-acquired property" or its equivalent, since the court will interpret the agreement in light of trade custom and commercial purpose. Frankel v. Associates Fin. Servs. Co., 281 Md. 172, 377 A.2d 1166 (1977).

Under UCC § 9-204(5), a "floating lien" security agreement will be effective according to its own terms, but only if those terms or the course of dealing of the parties evidence that the real intent of the parties was that their subsequent transactions be covered by terms of security agreement; in instant case there was nothing to show that parties ever intended that their security agreement would apply to future contingent liability on executory contracts between parties which were not similar and not directly related to transaction set forth in original security agreement. John Miller Supply Co. v. Western State Bank, 55 Wis. 2d 385, 199 N.W.2d 161 (1972).

26. Intent.

Security agreement which provided for security interest in specified items of household furniture and for security interest in "all additions and accessions" to such furniture did not apply, under UCC § 9-204(4)(b), to all of debtor's after-acquired furniture and household furnishings, since proper interpretation of phrase "additions and accessions," when read in context of security agreement and secured interest in specified items of household furniture, was that it only applied to "accessions"-that is, articles later acquired and physically attached to items of furniture listed as collateral in security agreement. Anderson v. Southern Disct. Co., 582 F.2d 883 (4th Cir. N.C. 1978).

Future advance clauses found in two security agreements and financing statements did not apply to subsequent purchases from secured party made by debtor on open account where it was not intention of debtor and secured party for later purchases to be secured by future advance clauses in security agreements, in that parties treated each as separate and distinct agreement, and each was for specific nonrecurring purposes which was not related in any way to later inventory purchases. Kimbell Foods, Inc. v. Republic Nat'l Bank, 401 F. Supp. 316 (N.D. Tex. 1975), rev'd on other grounds, 557 F.2d 491 (5th Cir. Tex. 1977), reh'g denied, 564 F.2d 97 (5th Cir. Tex. 1977).

In considering whether a security agreement covers particular collateral, the debtor's intent must be judged by the language of the security agreement and not by possible inferences from the surrounding circumstances. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

27. Language creating coverage.

Security agreement which provided for security interest in specified items of household furniture and for security interest in "all additions and accessions" to such furniture did not apply, under UCC § 9-204(4)(b), to all of debtor's after-acquired furniture and household furnishings, since proper interpretation of phrase "additions and accessions," when read in context of security agreement and secured interest in specified items of household furniture, was that it only applied to "accessions"-that is, articles later acquired and physically attached to items of furniture listed as collateral in security agreement. Anderson v. Southern Disct. Co., 582 F.2d 883 (4th Cir. N.C. 1978).

Although the Uniform Commercial Code does not require both a financing statement and a security agreement, there is no reason why a financing statement cannot serve as a security agreement, at least when it is accompanied by a note. The purpose of a financing statement is simply to give notice to the world that designated parties have entered into a secured transaction that covers described collateral; the details of the transaction however, must be learned from the parties. For example, if after-acquired property is to be included as collateral, the security agreement is where this matter should be covered. In other words, under UCC § 9-204(3), the debtor's intent to create a security interest in after-acquired property must be ascertained from, and judged by, the language of the security agreement and not the language of the financing statement. Drysdale v. Cornerstone Bank, 562 S.W.2d 182 (Mo. Ct. App. 1978).

Provision in furniture installment-sale contract which provided that seller would have purchase-money security interest in both furniture purchased by buyer and also "all after-acquired property in substitution therefor" until buyer had made all payments due under contract was too broad and violated Illinois version of UCC § 9-204(2), which restricts creditor's right in after-acquired property to property acquired by debtor within ten days of creditor's giving value. Aronson Furn. Co. v. Johnson, 47 Ill. App. 3d 648, 365 N.E.2d 61 (1st Dist. 1977).

"Dragnet" clause of chattel mortgage agreement encompassed contemporaneously made real estate bond and mortgage and therefore also covered the debt arising from the default on foreclosure of the real estate mortgage. In re Riss Tanning Corp., 468 F.2d 1211 (2d Cir. N.Y. 1972).

"Dragnet" clause of chattel mortgage agreement stating that equipment was security for note "as well as for payment of any other obligation or liability due or to become due whether now existing or hereafter arising" encompassed contemporaneously made real estate bond and mortgage and therefore also covered debt arising from default on foreclosure of that mortgage. In re Riss Tanning Corp., 468 F.2d 1211 (2d Cir. N.Y. 1972).

Where bank had possession of stock pledged as collateral for loans made to decedent's son and prior course of dealing between parties including signed hypothecation agreement form provided ample evidence of agreement that stock would serve as collateral for continuing advances by bank to son, bank had enforceable security interest in stock, despite absence of adequate description of stock in stock assignment and hypothecation agreement. Beyer's Estate v. Bank of Pa., 449 Pa. 24, 295 A.2d 280 (1972).

Assignee of all receivables "now or hereafter" owned is assignee of accounts receivable and as such, under UCC § 9-204, has continuing security interest in present and future (court's emphasis) inventory of his debtor, and his lien prevails over a subsequent judgment creditor who levied prior to the secured party taking possession of the collateral. O'Hara & Shaver, Inc. v. Empire Bituminous Prods., Inc., 67 Misc. 2d 47 (1971).

Possibly, between the parties to the security agreement, the ambiguous provision to the effect that it creates a security for "any and all liabilities...now existing or hereafter arising" might be found, on parol testimony, to mean that it does apply to subsequent deliveries, but so to find under UCC § 9-204(3) where third-party claimants to the fund were involved would be to stretch its language beyond what is reasonable and beyond what is just. Rusch Factors, Inc. v. Passport Fashion, Ltd., 67 Misc. 2d 3 (1971), aff'd, 38 A.D.2d 690, 327 N.Y.S.2d 536 (1st Dep't 1971), appeal denied, 30 N.Y.2d 482 (1972).

A provision of the security agreement relating to inventory that it applies "to all collateral of the kind which is subject of this agreement which debtor may acquire at any time" manifests a clear intent to include future inventory of the debtor. Thomson v. O.M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (1962).

Accounts receivable which the creditor agreed in 1957 to assign to the bank as they became due from the United States government fell within the clause covering "all future accounts receivable submitted" contained in a 1955 financing statement filed by the bank, so that the interest of the bank, as the secured party, was superior to that of the receiver in bankruptcy in a 1958 proceeding, and any funds which had been placed in the hands of the bank pursuant to the assignment did not have to be turned over to the receiver. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

28. Priority.

In an action by a seller of air conditioning equipment against a bank which held a perfected security interest on all after-acquired property belonging to the bankrupt purchaser of the air conditioning equipment, the trial court erred in granting possession of the air conditioning units to the seller where the security agreement held by the bank specifically included after-acquired property, including air conditioning units, and such security agreement had been perfected by being filed with the chancery clerk's office and in the office of the secretary of state of the State of Mississippi four months prior to the sale of the units to the purchaser; nor did the seller attain the status of a purchase money secured party where the conditional sales contracts covering the air conditioning units had not been filed until more than a year after the sale was completed, thereby ignoring the requirements of § 75-9-312(4) requiring perfection of the security interest at the time the debtor received possession of the collateral or within ten days. Peoples Bank & Trust Co. v. Comfort Eng'g Co., 408 So. 2d 1190 (Miss. 1982).

In action for conversion of crops by defendant, where security interests of both plaintiff and defendant in same after-acquired crops of debtor attached under UCC § 9-204(1) and § 9-204(2)(a) at exactly the same time (when crops were planted), and where, because debtor owed installments to plaintiff within six months of planting his crops, defendant's security interest was not entitled to priority under UCC § 9-312(2) over plaintiff's security interest, plaintiff's security interest, which was perfected by filing of financial statement before defendant perfected his security interest by filing such a statement, was entitled under UCC § 9-312(5)(a) to priority over security interest of defendant. United States v. Minster Farmers Coop. Exch., Inc., 430 F. Supp. 566 (N.D. Ohio 1977).

Subsections (1) and (3) of UCC § 9-204, when read together, make it clear that security interest that arises by virtue of after-acquired property clause has equal status with security interest in collateral in which debtor has rights at time value is given under security agreement. Valley Nat'l Bank v. Flagstaff Dairy, 116 Ariz. 513, 570 P.2d 200 (Ct. App. 1977).

Although it had been orally agreed between buyer and seller that delivery of machine was not to be made except upon payment, such agreement as to delivery and payment was modified or waived by seller, and buyer became credit buyer, when manufacturer mistakenly shipped machine to buyer and seller forwarded invoice requiring payment "net in 30 days"; consequently, buyer acquired rights in machine and seller's unperfected purchase money security interest became subordinate to lender's security interest in buyer's after-acquired "equipment." Galleon Indus., Inc. v. Lewyn Mach. Co., 50 Ala. App. 334, 279 So. 2d 137 (Civ. App. 1973), cert. denied, 291 Ala. 779, 279 So. 2d 142 (1973).

Where a security agreement has already been executed, a security interest in subsequent accounts receivable attaches as soon as the accounts become due, and prevails over a judgment lien thereafter obtained. Space-Tronics, Inc. v. IBM Corp., 3 U.C.C. Rep. Serv. 902 (1966, NY Sup).

29. 10-day rule generally.

Where secured party's interest in "replacement of collateral" was limited to property "of like kind acquired within 10 days" of the loan, security agreement did not violate UCC § 9-204(4)(b), since under that section, after-acquired property can be subject of security interest if debtor acquires interest in such property within ten days after secured party gives value to debtor. Dzadovsky v. Lyons Ford Sales, Inc., 452 F. Supp. 606 (W.D. Pa. 1978), aff'd, 593 F.2d 538 (3d Cir. Pa. 1979).

Statement in lender's consumer-credit disclosure form which merely stated that security agreement between lender and borrower would secure "future or other indebtedness" and cover "after-acquired property" did not inform borrower that under UCC § 9-204(4)(b), lender's security interest could not attach under such after-acquired property clause as to consumer goods, other than accessions, unless such goods were acquired within 10 days after secured party gave value. Casillas v. Government Employees Credit Union, 570 S.W.2d 57 (Tex. Civ. App. 1978), writ ref'd n.r.e., (Dec. 13, 1978).

Ten day limitation on attachment of after-acquired consumer goods under UCC § 9-204(4)(b) is applicable to security agreement even though the security document does not state the ten day limitation. Freeman v. Decatur Loan & Fin. Corp., 140 Ga. App. 682, 231 S.E.2d 409 (1976).

Where (1) creditor's loan disclosure statement stated that transaction was secured by security agreement covering all of debtor's household goods, appliances, and furniture then located on or about debtor's residential address, and (2) financing statement filed by creditor stated that it covered household goods, furniture, and appliances "now owned or hereafter acquired" by debtor, court held (1) that under UCC § 9-204(4)(b), which prevents a security interest from attaching to consumer goods acquired more than ten days after the transaction, financing statement was not enforceable as to debtor's after-acquired property, and (2) creditor's contention that financing statement conferred no rights on parties did not lessen his attempt to mislead and confuse debtor in violation of Federal Consumer Credit Protection Act and Regulation Z. Ballew v. Associates Fin. Servs. Co., 450 F. Supp. 253 (D. Neb. 1976).

Under UCC § 9-204(4)(b), security interest can be acquired (as additional security) in after-acquired consumer goods only if such goods are accessions or if borrower obtains rights to such goods within ten days after secured party gives value. Murphy v. Beneficial Fin. Co., 443 F. Supp. 463 (S.D. Ohio 1976).

Automobile was "consumer goods" within meaning of UCC § 9-204(4), limiting security interests in after-acquired consumer goods to those in which debtor acquired rights within 10 days after secured party gives value. In re Dunne, 407 F. Supp. 308 (D.R.I. 1976).

30. Truth-In-Lending Act.

In an action by a lender to recover the balance due on a loan following the debtors' default, a counterclaim by the debtors based on a violation of the Truth in Lending Act (US Code, tit 15, § 1601 et seq.) in that the disclosure statement described the security interest as covering the debtors' automobile as well as all "household consumer goods of every kind now owned or hereafter acquired" by the debtors, was not time barred since although subdivision (e) of section 1640 of title 15 of the United States Code provides that such an action against a lender is to be commenced within one year from the date of the occurrence of the violation and the action was commenced more than three years after the loan was made, the counterclaim arose out of the transaction sued upon and is not untimely. Public Loan Co. v. Hyde, 47 N.Y.2d 182, 390 N.E.2d 1162 (1979).

In consolidated actions brought under Truth In Lending Act, court held (1) that loan documents which failed to indicate state law limitations under UCC § 9-204(2) on creditors' security interests in after-acquired property did not comply with disclosure requirements of Truth In Lending Act and Regulation Z, and (2) that security agreement of one creditor, which explicitly excepted "after-acquired consumer goods acquired more than 10 days after the date hereof," did comply with UCC § 9-204(2) and thus was not invalid under Truth In Lending Act and Regulation Z. Basham v. Finance Am. Corp., 583 F.2d 918 (7th Cir. Ill. 1978), cert. denied, 439 U.S. 1128, 99 S. Ct. 1046, 59 L. Ed. 2d 89 (1979), cert. denied, 444 U.S. 825, 100 S. Ct. 47, 62 L. Ed. 2d 32 (1979).

Borrower was entitled to recover $100, plus costs and attorney's fees, in action under federal Truth-in-Lending Act for lender's failure to disclose its acquisition of security interest in after-acquired consumer goods where (1) lender actually acquired security interest under UCC § 9-204(4)(b), (2) failed to disclose it, and (3) such failure was apparent on face of loan disclosure document. Wilson v. Allied Loans, Inc., 448 F. Supp. 1020 (D.C.S.C. 1978).

Disclosure statement of lender which advised borrower that after-acquired property would be covered by security interest but failed to advise borrower of limitation of security interest on after-acquired consumer goods pursuant to UCC § 9-204(4)(b), violated Truth in Lending Act regulation. Pollock v. General Fin. Corp., 535 F.2d 295 (5th Cir. Ga. 1976), reh'g denied, 552 F.2d 1142 (5th Cir. Ga. 1977), cert. denied, 434 U.S. 891, 98 S. Ct. 265, 54 L. Ed. 2d 176 (1977).

31. —Violation of 10-day rule.

A disclosure statement made by a lender which describes the security interest as covering all "household consumer goods of every kind now owned or hereafter acquired" is in direct conflict with subdivision (2) of section 9-204 of the Uniform Commercial Code, which limits the security interest a creditor may take in consumer goods to those acquired within 10 days after the creditor gives value, and is also in violation of Regulation Z (12 CFR 226.8 [b] [5]), which was adopted pursuant to the provisions of the Truth in Lending Act (US Code, tit 15, § 1601 et seq.) and requires a clear identification of the property to which the security interest relates; accordingly, inasmuch as the security interest was not properly and clearly set forth because it was unlawfully overstated and overbroad, the lender is liable to the debtor in an amount of twice the finance charge imposed, pursuant to subdivision (a) of section 1640 of title 15 of the United States Code. Public Loan Co. v. Hyde, 47 N.Y.2d 182, 390 N.E.2d 1162 (1979).

Statement in lender's consumer credit disclosure form which merely stated that security agreement between lender and borrower would secure "future or other indebtedness" and cover "after-acquired property" did not inform borrower that under UCC § 9-204(4)(b), lender's security interest could not attach under such after-acquired property clause as to consumer goods, other than accessions, unless such goods were acquired within 10 days after secured party gave value. Casillas v. Government Employees Credit Union, 570 S.W.2d 57 (Tex. Civ. App. 1978), writ ref'd n.r.e., (Dec. 13, 1978).

Lender's disclosure statement, which provided that security agreement would secure future indebtedness and would "cover after-acquired property," violated federal Truth-in-Lending Act and Regulation Z by not complying with requirement that lender must explain ten-day limitation of UCC § 9-204(4)(b) in order that borrower will be informed that any consumer goods that he may acquire within ten days of loan transaction are subject to lender's security interest, and that any consumer goods acquired after that date are not subject to such interest. Garza v. Allied Fin. Co., 566 S.W.2d 57 (Tex. Civ. App. 1978).

A failure on the part of a lender to disclose that the scope of its security interest in after-acquired consumer goods is limited to those acquired within 10 days after the lender gives value (Uniform Commercial Code, § 9-204, subd [2]) constitutes an affirmative misstatement of the scope of the lender's security interest, is violative of the Federal Truth in Lending Act (US Code, tit 15, § 1639) and a regulation promulgated thereunder, and renders the lender liable to the debtors for the statutory penalty of twice the finance charge (US Code, tit 15, § 1640); however, while section 353 of the New York Banking Law incorporates that Federal act and regulation to the extent of requiring the disclosure of all items required to be disclosed thereby, the improper disclosure statement here is not so blatant or substantial a violation of that section as to justify imposition of the drastic sanctions provided for in section 358 of the Banking Law, pursuant to which one who violates section 353 thereof is guilty of a misdemeanor and the underlying debt is totally invalidated. Public Loan Co. v. Hyde, 63 A.D.2d 193 (3d Dep't 1978), aff'd, 47 N.Y.2d 182, 417 N.Y.S.2d 238, 390 N.E.2d 1162 (1979).

In action by borrower under federal Truth-in-Lending Act (15 USCS § 1601 et seq.), defendant creditor's disclosure statement and security agreement violated both Truth-in-Lending Act and UCC § 9-204(4)(b), dealing with attachment of security interest under after-acquired property clause to consumer goods given as additional security where debtor acquires rights in such goods within ten days after secured party gives value, since creditor's security agreement claimed interest beyond scope permitted by UCC § 9-204(4)(b) by failing to allow for ten-day limitation that statute provided for. Conrad v. Beneficial Fin. Co. of New York, 91 Misc. 2d 643 (1977).

Creditor's disclosure statement violated federal Truth-In-Lending Act and Regulation Z where it failed to inform debtor (1) that under state law (South Carolina UCC § 9-204(4)(b)), potential security interest could have attached to all similar consumer goods acquired within 10 days of date when value was given by creditor, and (2) that under state law (South Carolina UCC § 9-204(5)), any future advance given as extension of credit by creditor to debtor could also be covered by same collateral. Jones v. Allied Loans, Inc., 447 F. Supp. 1121 (D.C.S.C. 1977).

In action for violation of federal Truth-in-Lending Act (15 USCS §§ 1601 et seq.), description in loan disclosure statement of property of debtors in which creditor held security interest under Uniform Commercial Code, which described such property as "all goods...hereafter located at debtor's address," was misleading, since under UCC § 9-204(4)(b), creditor can only obtain interest in after-acquired goods that debtor acquires within ten days of secured party's giving value, but loan disclosure statement did not inform debtors of such ten-day limitation. Cadmus v. Commercial Credit Plan, Inc., 437 F. Supp. 1018 (D. Del. 1977).

Provision in lender's disclosure statement, executed in connection with loan made to debtor for purchase of home, which recited that documents executed in connection with such transaction covered "all after-acquired property" of debtor, but which did not explain 10-day limitation set by UCC § 9-204(4)(b) on consumer goods and other personal property of debtor that could be subjected to lender's security interest, conflicted with UCC § 9-204(4)(b), federal Truth-in-Lending Act (15 USCS § 1601 et seq.), and regulations promulgated under such act because such provision inaccurately described property securing loan and was misleading and confusing to borrowers. Bartlett v. Commercial Fed. Sav. & Loan Ass'n, 433 F. Supp. 284 (D. Neb. 1977).

32. —Not violative of 10-day rule.

The failure of plaintiff finance company to state in its combined promissory note and disclosure statement that under State law the security interest covering defendants' after-acquired household consumer goods was limited to those goods acquired by defendants within 10 days after the loans were made (Uniform Commercial Code, § 9-204, subd [4], par [b]) did not violate the disclosure requirements of the Federal Truth in Lending Act (US Code, tit 15, § 1639, subd [a], par [8]) and the regulations thereunder which only require that the fact that after-acquired property will be subject to a security interest "be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired" (12 CFR 226.8 [b] [5]). The note and disclosure statement did reveal that a security interest was sought in after-acquired household goods. The omission to specify the limitation of the security interest in defendants' consumer goods to those acquired within 10 days is not significant enough to justify the total forfeiture of the principal and interest of the loans which would result under sections 353 and 358 of the Banking Law for a failure to properly disclose under the Federal act. A note and disclosure statement need not incorporate all portions of the State law in order not to run afoul of the Federal Truth in Lending Act which only requires a description of the security interest to be retained and clear identification of the property to which it relates. The Federal act gives the consumer the right to know the terms on which a lender will extend him credit, but does not give the consumer the right to know all the creditor's rights and duties under State law. Interlakes Fin. Corp. v. Payne, 92 Misc. 2d 770 (1978).

33. Miscellaneous.

Where debtor moved location of business to another county after creditor had properly filed financing statement in county where business was originally located, after-acquired property clause contained in creditor's security agreement pursuant to UCC § 9-204(3) did not apply to collateral delivered to debtor's new place of business, since perfection, i.e., creditor's giving of value and debtor's acquiring rights in collateral, did not occur until after debtor had moved. In re Hammons (1980, CA5 Miss.) 514 F2d 399, 6 BCD 187, 22 CBC 728, 28 UCCRS 857 (applying Mississippi Law).

After-acquired property clause in security agreement creates valid security interest in crops which are planted and become such within one year after the security agreement is executed, where rights in crops are acquired by debtor in ordinary course of his business. Overland Nat'l Bank v. Aurora Coop. Elevator Co., 184 Neb. 843, 172 N.W.2d 786 (1969).

C. Future Advances.

34. In general.

Fact that security agreement provided that retail store maintained security interest in all merchandise charged to account, even though operating as future advances and after acquired property clause, did not invalidate store's purchase money security interest in merchandise. In re Moody, 62 B.R. 282 (Bankr. N.D. Miss. 1986).

In action by one secured party to replevy common debtor's inventory collateral from defendant second secured party, where (1) defendant's security agreement was executed on June 9, 1975, and defendant thereunder immediately took possession of debtor's inventory collateral, which consisted of automobile parts and accessories, (2) plaintiff previously, on December 15, 1972, had filed financing statement, in which it listed itself as creditor and same person as debtor, which provided that such statement covered debtor's inventory of automobile parts and accessories, (3) plaintiff thereafter executed security agreement with debtor on December 28, 1972 which granted plaintiff continuing security interest in such inventory to secure (a) capital loan note, (b) certain other existing liabilities, including a wholesale account of indebtedness, and (c) all future advances, (4) debtor was constantly indebted to plaintiff from December, 1972, even though debtor fully repaid capital loan note on May 14, 1975, and (5) defendant claimed that since capital loan note (that is, the original indebtedness) had been fully repaid before date on which defendant's security interest attached, plaintiff had ceased to have security interest in debtor's inventory, court held (1) that since UCC § 9-204(3) clearly provides that obligations covered by a security agreement may include future advances, plaintiff's security agreement, because it covered future advances, was still effective, (2) that plaintiff was not required by UCC § 9-402(1) to file second financing statement to give notice of debtor's wholesale account of indebtedness, since UCC § 9-402(1) merely states that financing statement may be filed before security agreement is made or security interest otherwise attaches, which is what had occurred in the present case, and (3) that under UCC § 9-312(5)(a), because plaintiff had filed its financing statement before filing of defendant's financing statement, plaintiff's lien on debtor's collateral was superior to that of defendant. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Where (1) first creditor made its first loan to common debtor and secured it with financing statement and chattel mortgage that were filed on June 6, 1973, (2) second creditor made loan to debtor and filed its security agreement on same collateral on March 8, 1974, (3) third creditor made loan to debtor and filed its security agreement on April 26, 1974, (4) fourth creditor, in September, 1973, leased premises to debtor and assigned lease to second creditor in February, 1974, as security, but such lease was never recorded, (5) first creditor subsequently made additional loans to debtor which were secured by instruments filed on March 21, 1975 and March 1, 1976, (6) debtor fully paid off its first note to first creditor, but such creditor did not release of record its previously filed chattel mortgage, and (7) first creditor testified that although debtor had paid off its first note in full, debtor was never out of debt to first creditor after date on which such creditor's first loan was made, court held (1) that first creditor's subsequent loans to debtor were advances, that its recorded chattel mortgage contained a future-advances clause permitted by UCC § 9-204(5), and that it thus had first priority in the collateral, (2) that since first creditor's chattel mortgage had never been released of record, the other creditors could have discovered first creditor's claim, but apparently chose not to do so, (3) that debtor's payment of first creditor's first note did not terminate such creditor's continuing security interest, especially since such creditor's filed chattel mortgage contained a future-advances clause and debtor was thereafter never out of debt to first creditor, and (4) that fourth creditor's claim that his lease, although not recorded, amounted to landlord's lien that gave him priority over second creditor had no merit. Associated Bus. Inv. Corp. v. First Nat'l Bank, 264 Ark. 611, 573 S.W.2d 328 (1978).

Provisions of statute permitting any mortgage or other instrument given for purpose of creating lien on real or personal property to include future advances, but requiring that instrument state maximum principal amount of unpaid future advances that may be secured at any one time, was inconsistent with legislative intent embodied in provisions of UCC and were superseded by UCC § 9-204. Mason v. Avdoyan, 299 So. 2d 603 (Fla. App. 1974).

35. Intent.

Future advance clauses found in two security agreements and financing statements did not apply to subsequent purchases from secured party made by debtor on open account where it was not intention of debtor and secured party for later purchases to be secured by future advance clauses in security agreements, in that parties treated each as separate and distinct agreement, and each was for specific nonrecurring purposes which was not related in any way to later inventory purchases. Kimbell Foods, Inc. v. Republic Nat'l Bank, 401 F. Supp. 316 (N.D. Tex. 1975), rev'd on other grounds, 557 F.2d 491 (5th Cir. Tex. 1977), reh'g denied, 564 F.2d 97 (5th Cir. Tex. 1977).

Intent of parties was not to extinguish original obligation but merely to extend time of payment or, at most, to substitute new notes as conditional payment of old, dependent on payment of new notes to extinguish original obligation; consequently issue of new notes was not synonymous with making of future advances under UCC § 9-204(5). Mid-Eastern Elecs., Inc. v. First Nat'l Bank, 455 F.2d 141 (4th Cir. Md. 1970).

36. Language creating coverage.

In suit to obtain possession of five dump trucks or judgment against possessor thereof for amount of unpaid indebtedness secured by trucks, where evidence showed (1) that debtor had bought trucks under installment sales contract and security agreement dated June 30, 1973, and that security interest in trucks had been perfected by filing of financing statement, (2) that debtor had also bought other equipment from different seller under installment sales contract and security agreement dated July 24, 1973, (3) that both installment sales contracts and security agreements were assigned to plaintiff shortly after sales contracts had been entered into, (4) that debtor, who had been making payments to plaintiff, defaulted on both contracts before his death, (5) that plaintiff claimed that after security interest had attached to trucks, debtor wrongfully transferred them from Michigan to defendant in Oklahoma, and (6) that plaintiff, on basis of future-advances clause in first security agreement, claimed right to satisfy debtor's unpaid indebtedness under both security agreements from trucks, court held (1) that future-advances clauses are valid under UCC § 9-204(5), (2) that although it is no longer necessary, as between original lender and original debtor, for future advances to be of same class as primary obligation, future-advances clause in plaintiff's first security agreement was not sufficient to permit collateral (trucks) for first agreement to secure indebtedness incurred under debtor's second sales contract, since language in future-advances clause in first security agreement was not clear as to whether such collateral was intended to secure all of debtor's future debts arising as among debtor, assignor, and assignee (plaintiff) only, or whether collateral was intended to secure all debts that debtor might end up owing to assignor or assignee without regard to whom such debts were originally owed. Thorp Sales Corp. v. Dolese Bros. Co., 453 F. Supp. 196 (W.D. Okla. 1978).

Although UCC § 9-204(5) provides that obligations covered by security agreement may include future advances, in order for security interest to subject collateral to future advances, security agreement must clearly indicate, either directly or indirectly, that obligation covered includes future advances. Hence, language in security agreements executed by buyer in favor of seller of trucks, which provided that title to purchased collateral (trucks) should not pass to buyer until "all other indebtedness from buyer to secured party" (in addition to purchase payments and related charges on trucks) had been fully paid was not sufficient to include future advances in obligation under such security agreements. Texas Kenworth Co. v.

First Nat'l Bank, 564 P.2d 222 (Okla. 1977).

Provision in two security agreements, executed to secure payment of two notes evidencing loans made by bank to debtor, that collateral secured all existing and subsequently incurred indebtedness of debtor to bank was valid and effective under UCC § 9-201 and § 9-204(5) to continue bank's lien on collateral, even after debtor paid the two notes, where debtor had incurred other indebtedness to bank which remained unpaid. National Bank v. Shaad, 60 A.D.2d 774 (4th Dep't 1977).

Using future-advance clauses and using after-acquired property clauses in the original security agreement are not the only means by which perfected security interests can be obtained in subsequently contracted obligations or in goods the debtor may later come to own, since there is nothing exclusive about UCC § 9-204(3, 5). James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

37. Novation distinguished.

Execution of new note renewing evidence of old indebtedness and extending time of payment was not "future advance or other value" which Code required to be specifically included within terms of security agreement. In re Cantrill Constr. Co., 418 F.2d 705 (6th Cir. Ky. 1969), cert. denied, 397 U.S. 990, 90 S. Ct. 1124, 25 L. Ed. 2d 398 (1970).

38. Particular applications.

Where seller sold four trucks to buyer in 1969, obtained execution of four separate security agreements (one for each truck) for purchase price of trucks and related costs, and perfected four separate security interests in trucks by filing, but such security agreements did not specifically subject collateral (the four trucks) to any future advances that might be made by seller to buyer; where bank in 1971 made loan to purchaser of such trucks, took security interest in all equipment then or thereafter owned by purchaser, and also perfected such security interest by filing; where purchaser's obligation to pay seller purchase price of trucks and related costs had been satisfied when bank took possession of trucks and sold them; and where proceeds of such sale were not sufficient to make whole either bank or seller, (1) bank's security agreement entitled it to priority over all collateral (trucks) and proceeds of sale thereof, since seller's prior security agreements did not clearly secure certain future advances-allowed by UCC § 9-204(5)-that were later made by seller to purchaser and all of purchaser's debts to seller, except for such future advances, had been satisfied and seller's security agreements were no longer in effect when bank took possession of proceeds of sale of collateral; (2) bank's priority over collateral and proceeds of sale thereof were not affected by fact that seller's filed financing statements, which were filed when its 1969 security agreements were made, were never released by seller, since UCC § 9-406 does not impose duty to file such release in absence of written demand therefor by debtor to creditor under UCC § 9-404; and (3) bank, at time it took possession of trucks, was entitled to possession by virtue of its security interest and thus was not guilty of conversion of proceeds of sale. Texas Kenworth Co. v. First Nat'l Bank, 564 P.2d 222 (Okla. 1977).

Where first creditor in 1968 sold equipment to debtor, sale was financed by purchase money mortgage, and financing statement was filed, where in 1969 second creditor made advance to debtor, took same equipment as collateral and filed financing statement, and where in 1970 first creditor sold additional equipment to debtor, executed new purchase money mortgage and new note which included balance due on all indebtedness, and filed new financing statement, under UCC § 9-312(5)(a) security interest of first creditor with respect to equipment covered by 1968 security agreement took priority over second creditor's security interest notwithstanding first creditor's 1968 security agreement contained no provision to cover future advances as was specifically authorized by UCC § 9-204(5). Index Store Fixture Co. v. Farmers' Trust Co., 536 S.W.2d 902 (Mo. Ct. App. 1976).

D. Particular Collateral.

39. Accounts receivable.

Code permits security agreement to create lien in after-acquired accounts receivable; security interest in grain company's accounts "now or hereafter received" was security interest in accounts receivable as whole and not in individual components. Grain Merchants of Indiana, Inc. v. Union Bank & Sav. Co., 408 F.2d 209 (7th Cir. Ind. 1969), cert. denied, 396 U.S. 827, 90 S. Ct. 75, 24 L. Ed. 2d 78 (1969), but see, In re Coppie, 728 F.2d 951 (7th Cir. Ind. 1984), but see, Redmond v. Mendenhall, 107 B.R. 318 (D. Kan. 1989).

Bank held valid assignment of debtor's future accounts receivable as security for loan made by bank to debtor, since UCC § 9-204(3) states that security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by security agreement. Valley Nat'l Bank v. Flagstaff Dairy, 116 Ariz. 513, 570 P.2d 200 (Ct. App. 1977).

Although bank's financing statement on debtor's accounts receivable was on file with secretary of state at time subsequent creditor agreed to finance same accounts, bank would be estopped from asserting priority of its security interest where, upon being questioned, bank president stated that bank had security interest in furniture, fixtures, equipment and inventory of debtor corporation, but did not inform subsequent creditor of any security interest in accounts receivable held by bank. Manson State Bank v. Diamond, 227 N.W.2d 195 (Iowa 1975).

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

40. Inventory.

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

Under UCC § 9-204(3) when a security interest in inventory (court's italics) of a business, after-acquired inventory is automatically covered by the agreement unless it is clearly set out that only certain items of inventory are to be covered. In re Nickerson & Nickerson, Inc., 329 F. Supp. 93 (D. Neb. 1971), aff'd, 452 F.2d 56 (8th Cir. Neb. 1971).

Where the validity of a security agreement which secures both present and future advances and covers both existing and after-acquired inventory is not controverted, the security interest attached to such inventory. William Iselin & Co. v. Burgess & Leigh Ltd., 52 Misc. 2d 821 (1967).

41. —Attachment, perfection, priority.

Where boats and hulls in possession of boat builder were subject to mechanic's liens of builder's employees for labor performed in boats' construction, (1) builder's ownership of boats was subject to such liens, (2) builder's equity was boats, hulls, or value thereof, as reduced by employees' liens, and (3) lien of lender bank, which under UCC § 9-204(4)(b) was holder of perfected security interest in after-acquired property incorporated into boats and hulls, attached only to builder's equity in boats and hulls and was inferior to mechanic's liens of builder's employees. Smith v. Atlantic Boat Bldr. Co., 356 So. 2d 359 (Fla. App. 1978).

Where bank had security interest in furniture dealer's after-acquired inventory, dealer acquired certain inventory from manufacturer, and manufacturer provided delivery of items in its own trucks, at its own risk, and all sales were for cash on delivery, dealer acquired rights in collateral when it was delivered and, thus, bank's security interest attached at that point under UCC § 9-204(1), was perfected upon delivery under UCC § 9-303, and took priority over statutory landlord's lien which attached at same time. National Inv. Trust v. First Nat'l Bank, 88 N.M. 514, 543 P.2d 482 (1975).

While, by virtue of §§ 9-303(1) and 9-204(1), a security interest in after-acquired inventory items may not be fully perfected until it attaches to items as and when they are acquired by the debtor, nevertheless § 9-204(3) recognizes that a lien in such inventory items can be created by a security agreement and such a lien, if filing requirements are complied with, is superior to a subsequently acquired contract creditor's lien or other third party claims except those of buyers in ordinary course of business under § 9-307(1) and holders of perfected purchase money security interests under § 9-312(3). Rosenberg v. Rudnick, 262 F. Supp. 635 (D. Mass. 1967).

42. —Particular applications.

Glass, plywood, locks, hinges, pulls, felt, and other materials supplied by one company to another company to be manufactured into finished gun cabinets, which were then to be sold at reduced price to company furnishing materials, were "inventory" of manufacturer under UCC § 9-109(4) and thus subject to attachment, under UCC § 9-204(1), of perfected security interests of two banks in manufacturer's present and after-acquired inventory under security agreement executed by manufacturer in favor of banks to secure loans made by banks. Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

In action by inventory financer to recover damages from manufacturer for conversion of ten mobile homes sold by manufacturer on consignment basis to dealer, as to which homes inventory financer claimed perfected security interest, (1) manufacturer's claim that inventory financer's lien never attached to homes, which claim was based on "after-acquired property" nature of financer's lien and financer's alleged failure to advance funds to dealer with specific reference to such homes, could not be sustained, since under UCC § 9-204(3), validity of after-acquired property clauses in security agreements was no longer open to questions; (2) in present case, first two requirements of UCC § 9-204(1)-namely, that there must be agreement that security interest attach and secured party must give value-were clearly met by dealer's signing security agreement in favor of inventory financer and financer's advancing substantial funds pursuant to such agreement; (3) third requirement of UCC § 9-204(1)-namely, that debtor must acquire rights in collateral-was satisfied when dealer obtained possession of homes pursuant to consignment agreement between dealer and manufacturer; (4) under UCC § 2-326(2), dealing with goods held on sale or return, homes were subject to claims of dealer's creditors while in dealer's possession; and (5) under UCC § 9-303(1), inventory financer's security interest, which had been properly filed, became perfected when it attached to homes at time dealer obtained possession thereof. GECC v. Town & Country Mobile Homes, Inc., 117 Ariz. 562, 574 P.2d 50 (Ct. App. 1977).

Where debtor was corporation that operated retail clothing store, where secured party acquired perfected purchase money security interest in debtor's inventory including its proceeds and after-acquired property, where debtor corporation merged with other corporations, each operating retail clothing outlets, and, finally, where surviving corporation entered into assignment for benefit of creditors: (1) secured party had valid security interest in after-acquired inventory of debtor, notwithstanding that at time of assignment for benefit of creditors surviving corporation did not have in its possession any inventory purchased from secured party by surviving corporation for any of its constituent corporations; (2) after-acquired property clause extended to property acquired by surviving corporation after merger; and (3) financing statement on file at time of assignment for benefit of creditors was not deficient though it did not contain name of debtor-assignor. However, secured party did not have security interest in the proceeds of inventory from other stores not covered by security agreement. Inter Mt. Ass'n of Credit Men v. Villager, Inc., 527 P.2d 664 (Utah 1974).

43. Livestock.

Creditor with after-acquired security interest in livestock owned by debtor, a feedlot operator, took priority over third person who claimed ownership of certain cattle located in debtor's feedlot pens where, under UCC § 9-204, there was a valid security agreement, where creditor had given value and where evidence supported finding that cattle were purchased by debtor for himself rather than as agent for third person. Poteet v. Winter Garden Prod. Credit Ass'n, 546 S.W.2d 650 (Tex. Civ. App. 1977), ref. n.r.e (June 1, 1977).

Where security agreement covering herd of cattle described collateral as "84 Holstein Cows and 14 Holstein Heifers, 1 to 2 ½ years of age," description of collateral was sufficient under UCC § 9-110 to create enforceable security interest under UCC § 9-203(1)(b); furthermore, where security agreement provided that debtors had "right to sell cows that ceased to be productive or to otherwise cull the herd; but they shall at all times retain a sufficient number of replacement heifers, or otherwise provide satisfactory replacements, to maintain a herd not smaller than that being now purchased" and that "Buyers agree to grant t[sic] Sellers a lien upon said property [cattle] and upon the replacements therefor...," use of term "replacement" was adequate to create security interest in after-acquired property (i.e., cattle) under UCC § 9-204(3). Whitworth v. Krueger, 98 Idaho 65, 558 P.2d 1026, 99 A.L.R.3d 1046 (1976).

Cattle delivered by seller to cattle company did not become subject to security agreement between bank and cattle company under its after-acquired property clause where cattle company received cattle in question under agreement with seller that title would pass only upon payment and where, furthermore, cattle were received by employee of cattle company as agent for seller and were branded with brand later registered in name of seller. Zions First Nat'l Bank v. First Sec. Bank, 534 P.2d 900 (Utah 1975).

Cattle which feed lot owner purchased for account of another could not be considered after-acquired property coming within security agreements executed by feed lot owner and secured party. National Livestock Credit Corp. v. First State Bank, 503 P.2d 1283 (Okla. Ct. App. 1972).

An after-acquired property clause in a security agreement through which certain cows were sold was valid. Erb v. Stoner, 19 Pa. D. & C.2d 25 (1959).

44. Proceeds.

In dispute over proceeds of tractors subject to both "after-acquired property" clause under UCC § 9-204(3) and purchase money security interest, purchase money security interest was subordinated to other security interest where, under UCC § 9-312(4), debtor possessed equipment for more than 10 days prior to filing of financing statement. James Talcott, Inc. v. Associates Capital Co., 70 Ohio Op. 2d 295, 491 F.2d 879 (6th Cir. Ohio 1974).

In dispute between executrix of debtor's estate and creditor claiming security interest in bank account, security agreement identifying collateral as all existing and after-acquired contract rights and all proceeds of all such contract rights and accounts owned by debtor was sufficient to create security interest in after-acquired property under UCC § 9-204, and sums collected by executrix on accounts and contract rights of decedent were clearly "proceeds" under UCC § 9-306(1). Barnett Bank v. Fletcher, 290 So. 2d 533 (Fla. App. 1974).

In action between competing secured creditors over proceeds from debtor's crops, UCC § 9-402 requirement that collateral be adequately described was met where subsequent lender had actual knowledge of prior claim of security interest in debtor's property and crops; under UCC § 9-204(4), providing that no security interest attaches under after-acquired property clause to crops which become such more than one year after security agreement is executed, subsequent lender had burden of proving that crops in question were not planted until more than one year after original security agreement was executed. First Sec. Bank v. Wright, 521 P.2d 563 (Utah 1974).

45. Replacement goods.

In action by borrower against lender under Truth in Lending Act, security agreement clause granting security interest in "All of the consumer goods of every kind now owned or hereafter acquired by Debtors in replacement of said consumer goods and now owned or hereafter located in or about the place of residence of the Debtors' at the address shown above," was misleading in that under UCC § 9-204(2), a security interest may attach only to replacement goods acquired within 10 days after secured party gives value. Tinsman v. Moline Beneficial Fin. Co., 531 F.2d 815, 32 A.L.R. Fed. 854 (7th Cir. Ill. 1976).

Clause in security agreement which purported to give secured party after acquired security interest in all consumer goods of every kind then owned or thereafter acquired by debtors in replacement thereof went beyond UCC § 9-204 which requires all security interests to attach on consumer goods only after debtors have acquired rights in goods and given such rights as additional security within 10 days after secured party has given value. Sneed v. Beneficial Fin. Co., 410 F. Supp. 1135 (D. Haw. 1976).

III. Pre-Uniform Commercial Code Decisions.

46. In general.

Ten day limitation on attachment of after-acquired consumer goods under UCC § 9-204(4)(b) is applicable to security agreement even though the security document does not state the ten day limitation. Freeman v. Decatur Loan & Fin. Corp., 140 Ga. App. 682, 231 S.E.2d 409 (1976).

Where a trustee covered all agricultural products growing or to be grown during the year on certain lands and also all of mules, horses, and cattle, which at that particular time consisted of two head of mules, one head of horses, and three head of cattle, this description was sufficient to impose a valid lien on the above property. Albritton v. State, 52 So. 2d 608 (Miss. 1951).

Under the statute, a description of property in a deed of trust as being all crops of cotton, corn, truck and other agricultural products growing or to be grown by the grantor or by any one for him, and produced during the year 1938 upon a specifically described tract of land, and also the grantor's mules, horses, and cattle, together with all farming tools, implements, and machinery, and also all increase thereof and additions thereto within 12 months from the date of execution, was valid. Eiland v. Castle, 186 Miss. 513, 191 So. 492 (1939).

The statute is limited to chattels of the character described or limited as to locality, owned at the time of the execution of the instrument, and its provisions could not aid an indictment charging a defendant with obtaining money by false pretenses by mortgaging previously mortgaged property, where the property in question consisted of a crop to be grown by the defendant. State v. Collins, 186 Miss. 448, 191 So. 126 (1939).

This statute in providing that chattel mortgage on after-acquired property is valid does not limit validity to property acquired within twelve months, since the statute does not grant a right to execute mortgages on after-acquired property, but provides only when such mortgages shall be valid as to creditors, and that mortgagors may pay secured debts before maturity thereof. Prentiss Mercantile Co. v. Thurman, 173 Miss. 6, 161 So. 746 (1935).

RESEARCH REFERENCES

ALR. Priority as between seller or conditional seller of personalty and claimant under after-acquired property clause of mortgage or other instrument. 86

A.L.R.2d 1152.

Construction and effect of "future advances" clauses under UCC Article 9. 90 A.L.R.4th 859.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 185, 186, 189-193, 196-223.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:201 et seq (validity of security agreement and rights of parties thereto; When interest attaches).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1977 through 253:1995 (attachment of security interest; after-acquired property; future advances).

CJS. 79 C.J.S., Secured Transactions § 82 et seq.

§ 75-9-205. Use or disposition of collateral permissible.

(a) A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce, or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — Commingled goods, see § 75-9-336.

Alienability of debtor's rights, see § 75-9-401.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-205.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-205.

6. In general.

In bank's suit to have security interest in used-car dealer's inventory declared to be first and prior security interest as against interests of three persons to whom such inventory was transferred, where evidence showed that bank's security interest was perfected by filing, covered future advances, and gave bank security interest in all present and after-acquired property and proceeds; that one transferee took trust receipts and titles to specific vehicles to secure loans made to dealer and entered into security agreement granting security interest in vehicles identified in trust receipts, which agreement was filed after filing of bank's security agreement; that second transferee took trust receipts as security for loans made to dealer, but did not enter into security agreement with dealer; and that third transferee's purchase for resale of over half of dealer's inventory may have been financed by first transferee, (1) under UCC § 9-110, description of collateral in bank's security agreement included all of dealer's inventory and proceeds therefrom; (2) under UCC § 9-205, alleged failure of bank to supervise dealer's inventory properly could not constitute basis for denying equitable relief to bank; (3) security interest of first transferee was junior to bank's security interest because it was perfected after perfection of bank's interest; (4) security interest of second transferee was junior to bank's security interest because it was never perfected; and (5) security interest of third transferee was also subject to bank's security interest because such transferee was bulk purchaser under UCC § 1-201(9) and not buyer in ordinary course of business under UCC § 9-307(1). Community Bank v. Jones, 278 Or. 647, 566 P.2d 470 (1977).

In prosecution for crime of moving and transferring inventory with intent to hinder enforcement of security interest, defendant's transfer of one business to location of his other business and his commingling of inventories of his two businesses constituted legal behavior in absence of contrary stipulation in security instrument, since, inter alia, under UCC § 9-205, security interest was not invalidated or made fraudulent against creditors by commingling of inventories and UCC § 9-315 protected any security interest in commingled inventory. Sowards v. State, 137 Ga. App. 423, 224 S.E.2d 85 (1976).

Tobacco supplier that retained continuing security interest in all of tobacco dealer's current and future inventory of supplier's products, accounts receivable arising from sale of such products and all products and proceeds of foregoing, did not lose its security interest in proceeds from sale of its products by permitting such proceeds to be co-mingled with other funds in wholesaler's corporate bank account; hence, supplier was entitled to recover such proceeds from bank where bank transferred such funds from wholesaler's account to itself outside ordinary course of business. Brown & Williamson Tobacco Corp. v. First Nat'l Bank, 504 F.2d 998 (7th Cir. Ill. 1974).

Where automobile dealer financed his used car inventory through floor plan arrangement with finance company and, under side arrangement with second automobile dealer, satisfied his obligations to finance company by assigning used cars to second dealer, who would then issue its note to finance company in release of first dealer's note, but such cars were frequently left on first dealer's lot and sold by him on commission basis, and where first automobile dealer then entered into agreement with credit corporation to finance his new car inventory and executed security agreement in favor of credit corporation covering his inventory, including, inter alia, his used car inventory: (1) Credit corporation acquired perfected security interest in first dealer's used car inventory; (2) security interest was not waived by clause in security agreement providing that private sale of chattel to dealer in such types of chattels for amount originally paid by dealer for such chattel or at lesser fair price would be "commercially reasonable disposition thereof," nor was it waived by fact that credit corporation treated dealer's used car business as completely separate from his new car business which credit corporation was financing; (3) sales of used cars to second dealer, made at arm's length, without fraud and at fair price, were sales in ordinary course of business, and, hence, second dealer acquired title to such cars free of security interest. Weidinger Chevrolet, Inc. v. Universal C.I.T. Credit Corp., 501 F.2d 459 (8th Cir. Mo. 1974), cert. denied, 419 U.S. 1033, 95 S. Ct. 516, 42 L. Ed. 2d 309 (1974).

Rule that dealer having authority to expose floor-plan cars for sale in ordinary course of business binds his mortgagee to deliver title to any car so sold, when payment is made to dealer and whether or not dealer remits proceeds to his mortgagee, unless buyer knows or should have known of financing arrangements, or unless contract of sale can and does expressly limit warranty of title given, was not affected or undermined by subsequent adoption of article 9 of UCC; although in adopting Code, Ohio general assembly modified language of UCC to provide that § 9-307 does not apply in motor vehicle title cases, and though UCC § 9-205 repudiates, as against creditors, common law rule which held floating liens void as matter of law, protection afforded purchaser in ordinary course of business was expanded to provide absolute protection in cases other than purchases of motor vehicles; however, it cannot from this be concluded that buyer of vehicle is left unprotected, only that Commercial Code, as adopted, fails to speak to issue and recourse must be had to common law and other statutory law. Levin v. Nielsen, 37 Ohio App. 2d 29, 306 N.E.2d 173 (1973).

Under UCC, parties to security agreement were free to decide who should have right to possession of collateral. American Honda Motor Co. v. United States, 363 F. Supp. 988 (S.D.N.Y. 1973).

Flexible method of financing whereby lenders make loans secured by revolving pool of collateral, dispensing with assignment of individual receivables and using special cash collateral accounts for receiving and disbursing proceeds therefrom, is authorized by Code abrogation of "debtor dominion" rule of Benedict v. Ratner. Grain Merchants of Indiana, Inc. v. Union Bank & Sav. Co., 408 F.2d 209 (7th Cir. Ind. 1969), cert. denied, 396 U.S. 827, 90 S. Ct. 75, 24 L. Ed. 2d 78 (1969), but see, In re Coppie, 728 F.2d 951 (7th Cir. Ind. 1984), but see, Redmond v. Mendenhall, 107 B.R. 318 (D. Kan. 1989).

The perfected security interest of a retail finance corporation who purchased a credit agreement signed by a "buyer in the ordinary course of business" from an automobile dealer had priority over the perfected interests of a bank which furnished floor plan financing to finance the dealer's acquisition and holding of motor vehicles for use and resale in the course of the dealer's business. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

RESEARCH REFERENCES

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 392-395.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:171, 9:172 (use or disposition of collateral without accounting).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:1996 through 253:2004 (permissible use or disposition of collateral).

29 Am. Jur. Proof of Facts 2d 711, Secured Transactions — Waiver of Security Interest.

CJS. 79 C.J.S., Secured Transactions § 88 et seq.

72 C.J.S., Pledges §§ 14, 17, 18.

Law Reviews. The recent erosion of the secured creditor's rights through cases, rules and statutory changes in bankruptcy law, 53 Miss. L. J. 389, September, 1983.

§ 75-9-206. Security interest arising in purchase or delivery of financial asset.

(a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business is transferred by delivery with any necessary endorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) The security interest described in subsection (c) secures the obligation to make payment for the delivery.

SOURCES: Former 1972 Code § 75-9-206 [Codes, 1942, § 41A:9-206; Laws, 1966, ch. 316, § 9-206, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-403 by Laws, 2001, ch. 495, § 1. Present § 75-9-206 was derived from former 1972 Code § 75-9-116 [Laws, 1996, ch. 468, § 60, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

SUBPART 2.

RIGHTS AND DUTIES.

SEC.	
75-9-207.	Rights and duties of secured party having possession or control of collateral.
75-9-208.	Additional duties of secured party having control of collateral.
75-9-209.	Duties of secured party if account debtor has been notified of assignment.
75-9-210.	Request for accounting; request regarding list of collateral or statement of account.

§ 75-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106 or 75-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 61, eff from and after July 1, 2006.

Cross References — Variation of provisions of this Code by agreement, see § 75-1-302.

Transfer and negotiation of negotiable instruments, see § 75-3-201 et seq.

Right to compel indorsement of negotiable document of title, see § 75-7-506.

Right to compel indorsement of investment security, see § 75-8-304.

Right of the debtor to use collateral, see § 75-9-205.

Perfection without filing, see § 75-9-313.

Perfection by control, see § 75-9-314.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-207.

6. In general; duty of care.
7. Disclaimer of duty.
8. Duty to preserve value.
9. —Duty of government as to treasury bills.
10. Duty to record security interest.
11. Proof of negligence or bad faith.
12. Wrongful conversion.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-207.

6. In general; duty of care.

In an action for a deficiency judgment on a secured note, in which the maker of the note claimed a setoff for profits earned by guarantors of the note while the collateral was in their possession and used by them prior to the sale, the trial court erred in refusing to allow the jury to consider evidence of profits earned by the guarantors through their use of the collateral, since, once they had paid the note and received the collateral securing it, they were subject to all the rights and obligations of the creditor with regard to disposition of the collateral, pursuant to § 75-9-504(5), and since § 75-9-207(2)(c) obligated them to apply any net profits received from their possession of the collateral to reduce the secured obligation. Murray v. Payne, 437 So. 2d 47, 45 A.L.R.4th 379 (Miss. 1983).

Failure to exercise right to convert debentures into stock, or failure to present note for payment with result that solvent indorser is thus released from liability, falls within second sentence of UCC § 9-207(1), dealing with duty of secured party to use reasonable care to preserve collateral in his possession. However, a bank which holds stock as collateral for a loan is under no duty to the borrower to sell the stock if it declines in value. In such a case, it is the borrower who makes the investment decision to purchase the stock; the lender merely accepts it as collateral for the loan and does not undertake to act as an investment adviser. Capos v. Mid-America Nat'l Bank, 581 F.2d 676 (7th Cir. Ill. 1978).

The rule of reasonable care set forth in UCC § 9-207(1) with regard to the custody and preservation of collateral in the secured party's possession is confined to physical care of the chattel, regardless of whether it is an object, such as a horse or piece of jewelry, or a negotiable instrument or document of title. The rule does not apply to mere diminution in the market value of securities. Capos v. Mid-America Nat'l Bank, 581 F.2d 676 (7th Cir. Ill. 1978).

Bank failed to exercise reasonable care mandated by UCC § 9-207 when it deliberately delivered note and mortgage to one other than its owner. Signer v. First Nat'l Bank & Trust Co., 455 F.2d 382 (6th Cir. Ky. 1971).

7. Disclaimer of duty.

Even if there was valid agreement exempting secured party's assignee from use of reasonable care in preservation of collateral, where assignee did not respond to assignor's letter indicating that assignor was relying on assignee to record judgment note, assignee was estopped from raising exemption; held, exemption or exculpation clause was not effective as against duty of care imposed by UCC § 9-207(1). Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

A disclaimer of duty of reasonable care toward collateral by secured party is invalid as violative of UCC § 1-102(3). Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

8. Duty to preserve value.

Under UCC §§ 3-201(2), which deals with transfer of security interest in instrument, and 9-207(1), which deals with secured party's duty to preserve collateral in his possession, where payee of note executed by defendant assigned such note to bank as collateral security for loan, (1) payee had no right to compromise or settle note, or to take any action that might diminish bank's interest therein, and (2) bank's title thereto, to extent of debt owed to it by payee, was paramount. Moreover, after balance of payee's debt to bank had been paid by note's maker and bank had returned note to payee, note was still valid and outstanding, although maker was entitled to credit thereon for amount that he had paid bank in order to discharge payee's indebtedness to bank. Vinson v. McCarty, 413 So. 2d 1026 (Miss. 1982).

The rule of reasonable care set forth in UCC § 9-207(1) with regard to the custody and preservation of collateral in the secured party's possession is confined to physical care of the chattel, regardless of whether it is an object, such as a horse or piece of jewelry, or a negotiable instrument or document of title. The rule does not apply to mere diminution in the market value of securities. Capos v. Mid-America Nat'l Bank, 581 F.2d 676 (7th Cir. Ill. 1978).

Failure to exercise right to convert debentures into stock, or failure to present note for payment with result that solvent indorser is thus released from liability, falls within second sentence of UCC § 9-207(1), dealing with duty of secured party to use reasonable care to preserve collateral in his possession. However, a bank which holds stock as collateral for a loan is under no duty to the borrower to sell the stock if it declines in value. In such a case, it is the borrower who makes the investment decision to purchase the stock; the lender merely accepts it as collateral for the loan and does not undertake to act as an investment adviser. Capos v. Mid-America Nat'l Bank, 581 F.2d 676 (7th Cir. Ill. 1978).

UCC § 9-207(4) permits a secured party to use or operate the collateral for the purpose of preserving it or its value. However, this section does not give the secured party a right to appropriate the collateral permanently. Essentially, UCC § 9-207(4) reflects the fiduciary obligation of a creditor to manage and care for the collateral pending judicial or UCC foreclosure. And if a secured party takes possession of collateral and fails to proceed to obtain a valid foreclosure, it so acts at its peril. Jackson v. Star Sprinkler Corp., 575 F.2d 1223 (8th Cir. Mo. 1978).

In suit by debtor against creditor for damages for latter's refusal to allow stock constituting collateral for loan to be sold to prevent loss in its value, in which debtor alleged that creditor's refusal violated its duty under UCC § 9-207(1) to use reasonable care in custody and preservation of collateral, court held (1) that debtor's tender of less than total proceeds of proposed sale of the stock justified, as a matter of law, creditor's refusal to release it for sale, and (2) that debtor's demand for release of part of the collateral, even though total proceeds thereof were applied in part payment of the loan, could justifiably be refused unless remaining collateral was of a kind and quality equal or superior to that sold and was also of value sufficient to meet collateral requirements of the loan balance. Dubman v. North Shore Bank, 85 Wis. 2d 819, 271 N.W.2d 148 (Ct. App. 1978), aff'd, 90 Wis. 2d 226, 279 N.W.2d 455 (1979).

Assuming duty of pledgee of shares of stock to exercise reasonable care to preserve collateral in his possession required him to exercise reasonable care to preserve its value, pledgee's refusal to consent to sale of call options to purchase part of pledged shares within 6 months and 10 days, and to consent to sale of remaining shares, short against box, for amount less than loans secured, did not under circumstances constitute failure to exercise reasonable care to preserve pledged stock. Hutchison v. Southern Cal. First Nat'l Bank, 27 Cal. App. 3d 572, 68 A.L.R.3d 645 (4th Dist. 1972).

Within Oklahoma Code section requiring secured party to use reasonable care in preservation of collateral in his possession, "preservation" includes preservation of value. Reed v. Central Nat'l Bank, 421 F.2d 113 (10th Cir. Okla. 1970).

A sub-pledgee of negotiable securities is under the duty to exercise reasonable care for the preservation and protection of their value. Grace v. Sterling, Grace & Co., 30 A.D.2d 61 (1st Dep't 1968).

9. —Duty of government as to treasury bills.

Duty of secured party under UCC § 9-207 to protect collateral does not arise until secured party has exercised right to repossess collateral. North Carolina Nat'l Bank v. Sharpe, 35 N.C. App. 404, 241 S.E.2d 360 (1978).

Plaintiffs who had deposited one million dollars in United States treasury bills with clerk of tax court in order to stay assessment and collection of tax deficiency were not entitled to damages or interest on bills after they remained interest-free in treasury for one year following their maturity on theory that implied security agreement existed between parties under UCC § 1-201(3) and (37) and that federal government thus had duty to reinvest bills after their maturity or to notify plaintiffs of such maturity. Even assuming existence of implied security agreement between parties, duty of holder under UCC § 9-207(1) to preserve collateral does not include duty to make collateral produce income, and no decrease in bills' value was even remotely possible. Cleveland Chair Co. v. United States, 557 F.2d 244 (Ct. Cl. 1977).

District court did not have jurisdiction to entertain action by taxpayers against United States on theory that United States was liable under UCC § 9-207(1) to taxpayers for interest which they lost on matured treasury notes held by United States as condition of stay of assessment and collection of taxes pending appeal in former case. Cleveland Chair Co. v.

United States, 526 F.2d 497 (6th Cir. Tenn. 1975).

Where debtor sold vehicles that were subject to security interest to third party, secured party was entitled, on default, to enforce its right of possession against third party; failure of third party to surrender property immediately upon default and demand prevented secured party from using collateral under UCC § 9-207(4) or reselling or leasing it under UCC § 504(1), and third party was liable to secured party for loss of use of property as element of damages. Long Island Trust Co. v. Porta Aluminum, Inc., 49 A.D.2d 579 (2d Dep't 1975).

10. Duty to record security interest.

Although notes which had been guaranteed by individual who subsequently became bankrupt, which were made payable to borrowers from bank, and which were held by bank as collateral security for loans made to borrowers, were not in default when bank claimed its right of set-off against bankrupt under UCC § 9-207(1), insolvency of guarantor triggered bank's privilege, and possibly its duty, not only to file proof of claim in bankruptcy proceedings, but in alternative to assert any available set-off; initial immaturity of bankrupt guarantor's obligation upon collateral notes was not bar to bank's right of set-off. In re Johnson, 552 F.2d 1072 (4th Cir. Va. 1977).

Where purchaser of airplane executed chattel mortgage and promissory note in favor of bank, guarantors executed guarantee and bank failed to record chattel mortgage with federal aviation authority for more than two years, although UCC § 3-606 did not apply, UCC § 9-207 did apply, bank breached its duty to promptly record chattel mortgage, thereby unjustifiably impairing collateral upon which guarantors had right to rely, and consequently guarantor's right of subrogation, and guarantors were properly discharged to extent of value of security lost. National Bank v. Alford, 65 Mich. App. 634, 237 N.W.2d 592 (1975).

An agreement between an equipment manufacturer and a finance company to the effect that the finance company was under no responsibility to record or file security paper was deemed waived by the finance company's retention of, and inaction upon, a letter from the manufacturer accompanying its transmittal of a conditional sales contract and judgment note requesting the finance company to record the paper, and the finance company's failure to comply with the statute placed the burden of loss from the dissipation of the security upon its shoulders. Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

An exculpatory clause appearing in a written assignment, which accompanied delivery to a finance company of a conditional sales contract and judgment note, to the effect that the assignor warranted compliance with all filing and recording requirements and without responsibility on the assignee's part for any omission or invalidity, did not impose liability on the assignor for the assignee's subsequent failure to record the judgment note prior to the makers' disposing of their real property (which recording could not be effected under Pennsylvania law until after the note was in default); the court noting that the letter transmitting the papers to assignee requested the finance company to record the note in the proper county and that at the time the judgment note was in default it was exclusively in the possession of the assignee. Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

Under this section, accommodation or co-maker of note was entitled to have secured party take steps necessary to preserve maker's rights under note, including proper filing of chattel mortgage and delivery of certificate of title to proper official for notation of mortgage encumbrance thereon. Shaffer v. Davidson, 445 P.2d 13 (Wyo. 1968).

11. Proof of negligence or bad faith.

Pledgee was not responsible for decline in market value of securities pledged to it as collateral for loan absent showing of bad faith or negligent refusal to sell after demand by pledgor. New Jersey Bank v. Toffler, 139 N.J. Super. 161, 353 A.2d 116 (App. Div. 1976).

In the absence of proof that secured party failed to use reasonable care in the custody and preservation of a repossessed automobile, and of evidence of a causal connection between unreasonable care and the damaged condition of the vehicle discovered by the buyer when it was restored to him, no liability either in tort or contract attaches to the secured party. Del Negro v. Worcester County Nat'l Bank, 26 Mass. App. Dec. 59 (1963).

12. Wrongful conversion.

Failure to return pledged security to pledgor upon satisfaction of indebtedness amounts to wrongful conversion of security for which pledgee is liable. Signer v. First Nat'l Bank & Trust Co., 455 F.2d 382 (6th Cir. Ky. 1971).

Bank was liable for wrongful conversion where it inadvertently released third party's note and mortgage to third party instead of to its signer-pledgor. Signer v. First Nat'l Bank & Trust Co., 455 F.2d 382 (6th Cir. Ky. 1971).

RESEARCH REFERENCES

ALR. Interest on damages for pledgee's refusal to return pledged property. 36 A.L.R.2d 337.

Purchase by pledgee as subject of pledge. 37 A.L.R.2d 1381.

Punitive or exemplary damages for conversion of personalty by one other than chattel mortgagee or conditional seller. 54 A.L.R.2d 1361.

Liability of pawnbroker or pledgee for theft by third person of pawned or pledged property. 68 A.L.R.2d 1259.

Duty of pledgee of stocks, bonds, or similar securities to protect their value during period of pledge, under UCC § 9-207. 68 A.L.R.3d 657.

Secured party's duty under UCC § 9-207(2)(c) to reduce secured obligation by increase or profits received from collateral. 45 A.L.R.4th 394.

Am Jur. 1 Am. Jur. 2d, Accession and Confusion § 1 et seq.

11 Am. Jur. 2d, Bills and Notes § 622.

68A Am. Jur. 2d, Secured Transactions § 435-438.

5A Am. Jur. Pl & Pr Forms (Rev), Chattel Mortgages, Forms 51 et seq. (default; enforcement of security interest).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 53:2016 through 253:2030 (rights and duties when collateral is in possession of secured party).

29 Am. Jur. Proof of Facts 2d 711, Secured Transactions — Waiver of Security Interest.

CJS. 79 C.J.S., Secured Transactions §§ 36, 111 et seq.

15A C.J.S., Confusion of Goods.

72 C.J.S., Pledges §§ 7, 17 et seq.

§ 75-9-208. Additional duties of secured party having control of collateral.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under Section 75-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under Section 75-9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under Section 75-9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under Section 75-8-106(d)(2) or 75-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter-of-credit right under Section 75-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SOURCES: Former 1972 Code § 75-9-208 [Codes, 1942, § 41A:9-208; Laws, 1966, ch. 316, § 9-208, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-210 by Laws, 2001, ch. 495, § 1. Present § 75-9-208 was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 62, eff from and after July 1, 2006.

Cross References — Definitions, see § 75-9-102.
Perfection by control, see § 75-9-314.
Disposition of collateral after default, see § 75-9-610.

§ 75-9-209. Duties of secured party if account debtor has been notified of assignment.

(a) Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 75-9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — Contents of financing statement, see § 75-9-502.
Indication of collateral in financing statement, see § 75-9-504.

§ 75-9-210. Request for accounting; request regarding list of collateral or statement of account.

(a) In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen (14) days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen (14) days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one (1) response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding Twenty-five Dollars ($25.00) for each additional response.

SOURCES: Derived from former 1972 Code § 75-9-208 [Codes, 1942, § 41A:9-208; Laws, 1966, ch. 316, § 9-208, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Contents of financing statement, see § 75-9-502.
Indication of collateral in financing statement, see § 75-9-504.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-208.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-208.

6. In general.

UCC § 9-208(1) does not require debtor to make written request for balance due before he can redeem collateral. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

In action by secured party against purchaser of collateral for sum allegedly owed on account secured by collateral, secured party could be precluded from recovery, notwithstanding purchaser did not request debtor pursuant to UCC § 9-208 to obtain statement of account from secured party, if secured party verified directly to purchaser amount due on account without including contested sum. Ayers v. Yancey Bros. Co., 141 Ga. App. 358, 233 S.E.2d 471 (1977).

Use of nominee was legitimate under Uniform Commercial Code; thus, recording of financing statement was entirely proper despite fact that principal creditor's nominee, rather than principal creditor, was named as secured party. In re Cushman Bakery, 526 F.2d 23 (1st Cir. Me. 1975), cert. denied, 425 U.S. 937, 96 S. Ct. 1670, 48 L. Ed. 2d 178 (1976).

Secured party was not obligated under UCC § 9-208 to give statement of balance due where debtor made oral, rather than written, request for statement; secured party. Rainey v. Ford Motor Credit Co., 294 Ala. 139, 313 So. 2d 179 (1975).

Where a debtor moved inventory subject to security interest from one store to another, security interest's perfected status remained intact without necessity of refiling. Owen v. McKesson & Robbins Drug Co., 349 F. Supp. 1327 (N.D. Fla. 1972), aff'd, 486 F.2d 1401 (5th Cir. Fla. 1973).

A subsequent creditor of the debtor may protect himself by requiring the debtor, as a condition to granting a loan, to obtain disclosure by existing creditors to the debtor the status of existing financing arrangements with him. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

Section provides procedure under which secured party, at debtor's request, may be required to make disclosure. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

A creditor's failure to enforce the provisions of a security agreement requiring payments within a specified time was not a constructive fraud upon other creditors, since the other creditors were put on notice by the financing statement and under this section could have obtained from the creditor a detailed statement of amounts due. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

RESEARCH REFERENCES

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 458-460.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:331, 9:332 (request for statement of account or list of collateral).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2031 through 253:2036 (request for statement of account or list of collateral).

PART 3.

PERFECTION AND PRIORITY.

Subpart 1. Law Governing Perfection and Priority........75-9-301
Subpart 2. Perfection........75-9-308
Subpart 3. Priority........75-9-317
Subpart 4. Rights of Bank........75-9-340

Editor's Note — Many of the notes found under this part originated with the prior version of Chapter 9 which was revised in 2001. They have been moved to their current location at the direction of Codification Counsel. Some of the sections of the Uniform Commercial Code referenced in case notes under "Judicial Decisions" were current when the cases were decided but may have been revised or repealed since then. Cases decided under former law are clearly identified.

SUBPART 1.

LAW GOVERNING PERFECTION AND PRIORITY.

SEC.

75-9-301. Law governing perfection and priority of security interests.
75-9-302. Law governing perfection and priority of agricultural liens.
75-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.
75-9-304. Law governing perfection and priority of security interests in deposit accounts.
75-9-305. Law governing perfection and priority of security interests in investment property.
75-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.
75-9-307. Location of debtor.

§ 75-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in Sections 75-9-303 through 75-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

SOURCES: Former 1972 Code § 75-9-301 [Codes, 1942, § 41A:9-301; Laws, 1966, ch. 316, § 9-301; Laws, 1977, ch. 452, § 14; Laws, 1986, ch. 343, § 1; Laws, 1996, ch. 468, § 62, eff from and after July 1, 1996]; is now found in comparable provisions enacted at §§ 75-9-102, 75-9-317, and 75-9-323 by Laws, 2001, ch. 495, § 1. Present § 75-9-301 was derived from former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 63, eff from and after July 1, 2006.

Cross References — Security interests under motor vehicle titles law, see § 63-21-1 et seq.

Territorial application of Code, see § 75-1-301.

Scope of this chapter, see § 75-9-109.

Security interests under condominium law, see § 89-9-9.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

A. In General.

6. Generally.
7. Controlling law.
8. —Conflict of laws.
9. —Agreement of parties.
10. Perfection.
11. —Filing in debtor's principal place of business.
12. Security interest in accounts and contract rights.
13. Miscellaneous.

B. Mobile Goods.

14. In general.
15. Incoming goods subject to security interest.
16. Four month rule.
17. —Priority.
18. —Lapse of perfection.
19. —Particular examples.
20. Thirty day rule.
21. Movement of property covered by certificate of title.
22. —Title to nontitle state.
23. —Nontitle to title state.
24. —Between title states.
25. —Between nontitle states.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

A. In General.

6. Generally.

This section deals with accounts, contract rights and equipment relating to another state, and incoming goods already subject to a security interest. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

The institution of distraint proceedings obviously does not fall within the intendment of this section. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

7. Controlling law.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions.

Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

In debtor's action to enjoin creditor from enforcing two security agreements against collateral therefor, where evidence showed (1) that debtor and creditor had entered into such security agreements and that one of them had been perfected in several states, including New Jersey, (2) that second security agreement had in no way diminished validity of first security agreement, (3) that debtor's reason for seeking injunction against enforcement of such security agreements was creditor's alleged oral agreement to refrain from foreclosing on any debts due it in order to allow debtor to attain a healthy operating condition, (4) that creditor, after concluding that debtor could not attain a healthy operating condition, formally declared debtor to be in default under such security agreements and to owe creditor over $27 million in principal debt and (5) that creditor had then accelerated maturity of all of debtor's term obligations and demanded payment of all principal and interest on debtor's demand obligations, court held (1) that debtor's claim of alleged oral agreement to refrain from foreclosure was unsupported by the evidence, (2) that under (a) UCC § 1-105(1), dealing with power of parties to choose law applicable to their transactions, (b) UCC § 9-102(1), which intends that substantive law of place where collateral is located governs without regard to possible contracts in other jurisdictions, and (c) UCC § 9-103, which lays down numerous choice-of-law rules regarding creation, perfection, and priorities in multistate security-agreement transactions, law of New Jersey governed security agreements in suit, (3) that security interests created by security agreements in suit were valid, (4) that debtor had failed to show any reason for granting injunctive relief against their enforcement and (5) that on debtor's default, creditor under UCC § 9-501(1), as adopted in New Jersey, had right to reduce its claim to judgment and to foreclose on the collateral. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (applying New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Recognition of the title certificate issued in the state of origin and perfection of the security interest noted thereon can continue only as long as the title certificate of the state of origin is the only certificate. Once a new certificate is issued in a second state, it becomes, under UCC § 9-103(4), "the jurisdiction which issued the certificate," and its law governs the perfection of a security interest. The underlying rationale of UCC § 9-103(4) is that there shall be only one title certificate for an automobile, which is that originally issued if it is still in existence. However, once a second certificate of title has been issued by a second state, it is the law of the second state which determines whether a perfected security interest exists in the vehicle, and the creditor must comply with the law of the second state in order to perfect his security interest. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

The exclusiveness of the Vehicle Code registration and transfer requirements for perfection of security interests in automobiles is provided for under the Uniform Commercial Code § 9103(4). Morris Plan Co. v. Moody, 266 Cal. App. 2d 28 (4th Dist. 1968).

In a case where the issue was to whether plaintiff had been guilty of a breach of contract in making instalment payments on the purchase of an airplane so as to give the seller a right to repossess the plane, the question as to whether Massachusetts law applied to the transaction was to be determined under subsection (1) of § 1-105 of the instant chapter and not under subsection (2) of said section and the reference therein to §§ 9-102 and 9-103 applicable to secured transactions because the issues in such case involved the duties of the parties under the primary obligation, and because the validity or perfection of the security interest were not involved. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

In a case where the issue is as to whether a buyer was in default under a contract of sale so as to give the seller a right to repossess the article sold, and where there is no issue as to the validity or perfection of a security interest, the question as to which law is to be applied to the transaction is governed by § 1-105(1) of the instant chapter and not by subsection (2) of the instant section. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

8. —Conflict of laws.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re

Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Large earth-moving trucks unquestionably belong in classification of "road building equipment", "construction machinery", "automotive equipment", or all these classifications; held, where it is conceded that debtor has chief place of business in Colorado, law of that state, including law on conflicts, must govern with respect to conflicting claims to trucks taken as trade-in by dealer in connection with sale of other construction equipment to buyer in good faith. GECC v. R.A. Heintz Constr. Co., 302 F. Supp. 958 (D. Or. 1969) (applying Colorado law).

If chief place of business of debtor is not in this state, law, including conflict-of-law rules, of jurisdiction where such chief place of business is located governs perfection of security interest and possibility and effect of proper filing with regard to construction machinery. GECC v. Western Crane & Rigging Co., 184 Neb. 212, 166 N.W.2d 409 (1969).

By adopting Illinois law, contract adopted Illinois conflicts rule of law, so that validity of security interest in goods under contract was to be determined by Indiana law, where goods were taken into Indiana within 30 days of attachment of security interest and where parties understood that property would be kept in Indiana. In re Kokomo Times Publishing & Printing Corp., 301 F. Supp. 529 (S.D. Ind. 1968).

Where it had not adopted the Uniform Trust Receipts Act, the State of Georgia would not be bound to accept the procedural aspects of the Tennessee Act relative to recordation. Chattanooga Disct. Corp. v. West, 219 F. Supp. 140 (N.D. Ala. 1963) (applying Georgia law).

9. —Agreement of parties.

While as between themselves the parties to a security interest transaction may lawfully agree as to the governing law, where the rights of third party creditors in the property of one of the parties are in question, the law of the state of the domicil or place of business of the contracting party in question is controlling. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

10. Perfection.

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4). Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust & Sav. Bank, 357 So. 2d 654 (Ala. 1978) (Also rejecting defendants' content on that Alabama UCC § 9-103(4) was inapplicable because Illinois certificate of title had not been issued when vehicle entered Alabama, since such interpretation would nullify "relation-back" features of Illinois certificate-of-title law).

Secured party who had perfected security interest on property in South Dakota, but who did not file and perfect his interest in Iowa within four-month period after goods were transported to Iowa, had junior interest to buyer for value who purchased goods within four-month period, but who had no knowledge or notice of security interest, after lapse of four months without perfection of security interest in Iowa. United States v. Squires, 378 F. Supp. 798 (S.D. Iowa 1974) (citing annotation; applying Iowa law).

Plaintiff had properly filed security agreement perfecting security interest; defendant later perfected security interest by taking possession pursuant to agreement giving defendant right to use machine at issue until completion of work; held, plaintiff was entitled to machine when purchaser filed petition for arrangement under Bankruptcy Act while machine was in defendant's possession. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970) (applying New Jersey law).

When the holder of a security interest perfects the same, subsequent purchasers and encumbrancers are charged with notice of such perfected interest. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

11. —Filing in debtor's principal place of business.

In conversion action to determine priority of security interests in bulldozer and right to proceeds from its sale, where (1) bulldozer was sold in Michigan to Michigan buyer which gave seller an Indiana address, (2) buyer at time of sale was authorized to do business in Indiana and was mainly engaged in developing Indiana property, (3) seller assigned its security agreement listing bulldozer as collateral to plaintiff, and plaintiff filed financing statement with Indiana secretary of state, (4) defendant thereafter obtained security interest in bulldozer under security agreement with buyer, who listed it as collateral for loan from defendant, and filed financing statement with Michigan secretary of state, and (5) plaintiff then filed financing statement in Michigan after defendant's filing, court held (1) that Indiana was buyer's "chief place of business" under UCC § 9-103(2), (2) that Indiana therefore was proper place to file financing statement to perfect security interest in bulldozer, and (3) that since only plaintiff had perfected its security interest in Indiana, judgment was properly entered in plaintiff's favor. Associates Fin. Servs. Co. v. First Nat'l Bank, 82 Mich. App. 495, 266 N.W.2d 490 (1978).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973) (applying Kansas law).

The mobility of tractors, normally used in more than one jurisdiction, makes filing in debtor's principal place of business necessary under UCC § 9-103(2) in order to perfect security interest therein, and bank which had not so filed could not prevail over tractor buyer's judgment creditor who levied against tractors in possession of buyer. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Where New Jersey was chief place of business of debtor which had entered into security agreement as to traxcavator, a heavy construction machine, rights of parties were governed by New Jersey law. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970).

12. Security interest in accounts and contract rights.

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors.

Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

13. Miscellaneous.

Since Illinois vehicle code provided exclusive means of perfecting and giving notice of security interest in motor vehicles, failure of Illinois seller of used automobile to note bank's lien on vehicle's certificate of title resulted in failure of bank's security interest to come into existence, thereby rendering inappropriate seller's references to Illinois Uniform Commercial Code in seller's action to replevy vehicle. Huber Pontiac, Inc. v. Wells, 59 Ill. App. 3d 14, 375 N.E.2d 149 (4th Dist. 1978).

Transaction between contractor and surety for completion of public improvement project following contractor's default was not intended to have effect as security. Aetna Cas. & Sur. Co. v. Perrotta, 62 Misc. 2d 252 (1970).

The lien of a common carrier for the cost of transporting a house trailer from Virginia to Oklahoma was subordinate to a prior security interest perfected in Virginia of which the carrier was charged with notice. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

B. Mobile Goods.

14. In general.

Industrial equipment may not be characterized as mobile goods within meaning of Code § 9-103(2). In re Dennis Mitchell Indus., Inc., 419 F.2d 349 (3d Cir. Pa. 1969) (applying Pennsylvania law).

15. Incoming goods subject to security interest.

A security interest in a house trailer perfected in Virginia before the trailer was moved to Oklahoma was effective in the latter state under subsec. (3). National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

An assignee of a conditional sales agreement made in New York is protected as against a purchaser of the security in Pennsylvania for a period of four months provided that the security interest was perfected in New York before the security was brought into Pennsylvania. Casterline v. GMAC, 195 Pa. Super. 344, 171 A.2d 813 (1961).

16. Four month rule.

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Where (1) Pennsylvania seller sold boat to Pennsylvania buyer and delivered it to buyer in Maryland, (2) secured party, which had financed purchase of boat by conditional sales contract, perfected its security interest in boat by filing financing statement in Pennsylvania (3) buyer resold boat to third person in Maryland, (4) seller, as representative of secured party, thereafter came to Maryland, took possession of boat, and returned it to seller's premises in Pennsylvania, and (5) second buyer brought replevin action to recover possession of boat, court held (1) that under UCC § 9-103(3), secured party's security interest in boat, which had been perfected under Pennsylvania law, was also perfected for four months under Maryland law, (2) that after such four-month period had run, secured party's failure to file financing statement in Maryland caused its security interest to become unperfected, and (3) that under UCC § 9-301(1)(c), such unperfected interest was subordinate to rights of second buyer, who was buyer not in ordinary course of business who gave value and received delivery of the collateral without knowledge of security interest therein and before such interest was reperfected in Maryland. Wind v. Westinghouse Credit Corp., 260 Pa. Super. 385, 394 A.2d 980 (1978).

The majority of courts which have considered the question have concluded that UCC § 9-103(4) does not apply to all security interests, but only to those which attach after the certificate of title is issued. It may be argued that the statute, as thus interpreted, permits a person in possession of personal property to defraud an innocent purchaser. But it must be kept in mind that the legislature, in adopting the Uniform Commercial Code, sought to strike a balance between the interests of the prior lienholder and those of a subsequent, good-faith purchaser or creditor. In order to afford some protection to the party with the prior interest, he is given, under UCC § 9-103(3), a period of four months in which to perfect his interest in this state. After that, his priority is lost until he perfects the interest. If this protection is given, a prospective purchaser or creditor has the burden of making sure that the property has been located in this state for more than four months. Associates Realty Credit, Ltd. v. Brune, 89 Wash. 2d 6, 568 P.2d 787 (1977).

One who takes title to incoming auto subject to security interest of assignee of conditional vendor during four months from time auto entered jurisdiction cannot prevail over assignee under UCC § 9-103(3). Newton-Waltham Bank & Trust Co. v. Bergen Motors, Inc., 68 Misc. 2d 228 (1971), aff'd, 75 Misc. 2d 103, 347 N.Y.S.2d 568 (1972).

17. —Priority.

Lien created in Massachusetts enjoyed superiority in New York for period of 4 months from date auto arrived in New York without any further measures being undertaken by conditional vendor's assignee, who sought to recover from New York purchaser, to localize such foreign security interest. Newton-Waltham Bank & Trust Co. v. Bergen Motors, Inc., 68 Misc. 2d 228 (1971), aff'd, 75 Misc. 2d 103, 347 N.Y.S.2d 568 (1972).

Where cattle here in question were transported from Utah to Wyoming within 4 months of their delivery to debtor, under Wyoming Code, creditor's security interest perfected under laws of Utah is superior to any rights of innocent purchasers. Utah Farm Prod. Credit Ass'n v. Dinner, 302 F. Supp. 897 (D. Colo. 1969) (applying Wyoming law).

18. —Lapse of perfection.

Where holder of security interest in automobile which was perfected under Texas law did not reperfect its security interest within four-month period after automobile was brought into Arizona, interests of persons who purchased automobile during that four-month period were not subject to such security interest. Arrow Ford, Inc. v. Western Landscape

Constr. Co., 23 Ariz. App. 281, 532 P.2d 553 (1975).

Goods having been removed directly to New Jersey, failure to file financing statement in that state clearly renders security interest unperfected at end of four months even if court considered security interest to have been originally perfected in Pennsylvania; held, four months' period begins to run whether or not secured party has notice that collateral has been removed to another jurisdiction. In re Dennis Mitchell Indus., Inc., 419 F.2d 349 (3d Cir. Pa. 1969) (applying New York law).

19. —Particular examples.

Where (1) plaintiff Farmers Home Administration made loan to Mississippi farmer and properly perfected security interest in Mississippi in all of farmer's livestock, (2) farmer, without knowledge or approval of plaintiff, shipped livestock from Mississippi to Tennessee to be sold, (3) livestock, within four months of their removal to Tennessee, were sold to bona-fide purchasers by defendant livestock broker, (4) farmer did not apply sale proceeds to plaintiff's loan and defaulted on loan payments, and (5) plaintiff took no action to perfect its security interest in Tennessee, court held (1) that Uniform Commercial Code should be adopted as relevant federal common law in Farmers Home Administration security-interest cases; (2) that if there should be lack of uniformity on particular issue, either because of nonuniform changes in UCC itself or because of differing interpretations of a uniform provision, court would ordinarily follow weight of authority; (3) that in present case, since right of plaintiff to recover in conversion against defendant depended on which of two interpretations should be given to four-months protection rule in UCC § 9-103(3), court would adopt interpretation favored by weight of authority, which is that UCC § 9-103(3) gives secured party four months of "absolute protection" in removal state without necessity of any additional filing in removal state at any time; and (4) that since defendant had sold livestock within four months of their removal to Tennessee, judgment would be entered for plaintiff. United States v. Burnette-Carter Co., 575 F.2d 587 (6th Cir. Tenn. 1978), cert. denied, 439 U.S. 996, 99 S. Ct. 596, 58 L. Ed. 2d 669 (1978).

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Perfected purchase money security interest from foreign state is not enforceable in Florida unless perfected within four-month period; this is clear legislative intent under UCC § 9-103(3) despite apparent injustice to holder of purchase money security interest who fails to register lien in Florida after motor vehicle is moved thereto. GECC v. Hollywood Bank & Trust Co., 263 So. 2d 593 (Fla. App. 1972).

The innocent purchaser in New Jersey of an automobile subject to a security interest perfected in New York takes the vehicle subject to the rights of an assignee of the original New York conditional vendor where the transaction in New Jersey took place within four months after the conditional vendee had removed the automobile to that state, even though the security interest had not then been perfected in New Jersey, for the four month period provided by subsec. (3) is an absolute period of protection of the vendor's security interest. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

A conditional vendor who fails to perfect his security interest within the four-month period provided by subsec. (3) is no longer protected, and a subsequent purchaser of the property for value and without notice of the security interest would take a superior title. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

20. Thirty day rule.

In bankruptcy proceeding involving conflicting interests in car purchased by debtor in Illinois prior to being declared bankrupt in Georgia, where (1) debtor created security interest in vehicle which holder duly perfected under Illinois statute that required such interest to be perfected by noting it on vehicle's certificate of title; (2) debtor at time of purchase informed secured party that debtor would remove vehicle to Georgia within 30 days for purposes other than transportation and debtor did remove it within such time, but secured party did not take any steps to perfect such security interest in Georgia; (3) debtor's trustee in bankruptcy claimed superior interest in vehicle under provision of Georgia certificate-of-title statute which declared that Georgia law would determine validity of out-of-state security interest in vehicle brought into Georgia if parties understood at time interest was created that vehicle would be kept in Georgia and vehicle was brought into Georgia within 30 days thereafter for purposes other than transportation; (4) secured party claimed superior interest in vehicle under another provision of the Georgia certificate-of-title statute which provided that security interest perfected under law of jurisdiction where vehicle was situated when interest attached would continue perfected in Georgia if name of holder of interest was shown on certificate of title issued by such other jurisdiction; and (5) secured party also contended that in light of Georgia version of UCC § 9-103(3), term "validity of security interest" in statutory provision on which bankruptcy trustee based claim to vehicle in suit was not synonymous with "perfection of security interest," so as to sustain trustee's claim, federal court would certify to Supreme Court of Georgia question whether holder of security interest in vehicle in suit was also required to obtain Georgia certificate of title for such vehicle and to note thereon its security interest in order to protect it against claim of bankruptcy trustee. In re McClintock, 558 F.2d 732 (5th Cir. Ga. 1977), appeal decided, 571 F.2d 317 (5th Cir. Ga. 1978) (certifying question of Georgia law determinative of cause to Supreme Court of Georgia).

21. Movement of property covered by certificate of title.

Where bankrupt, using money borrowed from New York bank, purchased second hand truck in Ohio and acquired clean certificate of title in Ohio, bank's security interest not being noted on title certificate as required by Ohio law, bankrupt registered vehicle in Ohio using title certificate, although bank knew nothing of Ohio registration and title certificate nor of bankrupt's intention to register vehicle there, and although truck was garaged principally in New York, in accordance with UCC § 9-103(4) law of Ohio determined existence of perfected security interest prior to bank's lawful repossession of truck in state of New York and bank, therefore, did not obtain perfected security interest in New York by filing financing statement in New York. In re Osborn, 389 F. Supp. 1137 (N.D.N.Y. 1975) (applying New York law).

Under Virginia UCC, perfection of security interest would be governed by law of jurisdiction which issued certificate of title on mobile home, which in this case was West Virginia. In re Smith, 311 F. Supp. 900 (W.D. Va. 1970), aff'd, 437 F.2d 898 (4th Cir. Va. 1971).

UCC § 9-103(4) unequivocally removes application of UCC § 9-103(3) to any personal property covered by a certificate of title issued under a statute of any state which requires indication on a certificate of title of any security interest as a condition of perfection; in other words, one who has a security interest in personal property, perfected in a state which requires the issuance of a certificate of title on such property and the listing thereon of a security interest as a condition of perfection, does not have to protect such security interest by any further action in a state to which the property may thereafter be removed; this places an undue burden on prospective lienees in Alabama which does not have a registration and title statute; it appears the undue hardship to lenders in Alabama resulting from the effect of UCC § 9-103(4) was created by the legislature and must be removed by it, either by repeal, amendment, or passage of other correctional legislation. Deposit Nat'l Bank v. Chrysler Credit Corp., 48 Ala. App. 161, 263 So. 2d 139 (Civ. App. 1972).

UCC § 9-103(4) relating to perfection of security interests in other states is not repealed by motor vehicle code provision regarding certificate of title to auto, and controls where auto was purchased in Illinois and registered in Ohio, where mortgagee's security interest was noted on Ohio certificate of title, and where owner's judgment creditor knew of foreign registration and that there was some lien, so that mortgagee's security interest under UCC § 9-103(4) was superior to that of creditor. Town House Motel, Inc. v. Ward, 2 Ill. App. 3d 699, 276 N.E.2d 809 (5th Dist. 1971).

Once a security interest (lien) is noted upon a certificate of title in a state which requires such notation for perfection, security interest (lien) remains perfected when vehicle is removed to another state, even if debtor has not obtained new certificate of title in other state. Streule v. Gulf Fin. Corp., 265 A.2d 298 (D.C. 1970).

Where a house trailer was purchased in Virginia and the certificate of title issued by that state showed a bank's conditional sales contract as a lien thereon, it was unnecessary for the security holder to perfect its lien in New York within four months after the trailer was moved there, for subsection (4), rather than subsection (3) was controlling. In re White, 266 F. Supp. 863 (N.D.N.Y. 1967).

22. —Title to nontitle state.

Where bank had perfected security interest in automobile in Oklahoma, driver of car fraudulently obtained Oklahoma certificate of title which indicated there were no liens on vehicle, drove car to Nevada and sold it to defendant on May 15, 1971, trial court erred in dismissing bank's complaint for conversion of car on grounds that bank failed to prove car had been brought into Nevada within four-month period immediately preceding date when driver sold car to defendant, as prescribed by UCC § 9-103(3); evidence showed that driver took possession of automobile in Oklahoma in December, 1970, that he made two payments on vehicle which were mailed from Oklahoma, and that he obtained Oklahoma certificate of title in March, 1971, from which it could be inferred that automobile was in Oklahoma as late as March, 1971, within four months of time when defendant purchased it. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

Where Texas bank perfected security interest in automobile located in Texas, a title state, and gave owner permission to take car to New York, a nontitle state, and license it there, with understanding that it would not have to relinquish its Texas title, and where owner, after driving car to New York and obtaining clear New York title certificate, drove car to Washington, a title state, obtained clear Washington title and within four months after leaving Texas sold car to Washington purchaser, Texas law governed initial perfection of security interest and, regardless of whether Texas bank perfected its security interest in compliance with Washington law, its security interest continued under UCC § 9-103(3) to be perfected in Washington for first four months after car was brought into state and, thus, upon owner's default, Texas bank could lawfully repossess car from Washington buyer. Morris v. Seattle-First Nat'l Bank, 10 Wash. App. 129, 516 P.2d 1055 (1973).

23. —Nontitle to title state.

New Jersey UCC § 9-103(4) should only be applied to goods which, at the time of entry into New Jersey, are covered by a certificate of title. New Jersey UCC § 9-103(3) should apply to all goods which are moved into New Jersey from noncertificate-of-title jurisdictions. If a certificate of title is subsequently acquired, New Jersey UCC § 9-103(3) remains applicable according to its terms. And with respect to professional buyers of goods, the four-month grace period provided in New Jersey UCC § 9-103(3) is absolute, and bona-fide status is no protection. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978).

In action to foreclose chattel mortgage on mobile home that was assigned to plaintiff by party that financed purchase of such home in British Columbia, Canada, where (1) plaintiff's security interest in such home was perfected by filing under British Columbia law, which did not issue certificates of title to mobile homes; (2) purchasers breached chattel mortgage's provisions by taking home from British Columbia into state of Washington without consent of plaintiff chattel-mortgage holder and secured Washington certificate of title to such home by falsely representing that they owned it free of any lien or security interest therein; and (3) purchasers on basis of such certificate of title obtained loan from Washington lender and lender perfected security interest in home in accordance with Washington law, court would hold under UCC § 9-103(3) and (4), and also Washington statute dealing with perfection and loss of security interest where vehicle subject to interest had certificate of title, that as between the two holders of a perfected security interest in such home, holder of interest perfected in British Columbia had priority, since UCC § 9-103(4) does not apply to all security interests, but only to those that attached after certificate of title to vehicle was issued. Associates Realty Credit, Ltd. v. Brune, 89 Wash. 2d 6, 568 P.2d 787 (1977) (citing annotation; also holding that the holder of security interest perfected in British Columbia must first exhaust its Canadian security before resorting to proceeds of sale, in state of Washington, of mobile home in suit).

Where security interest of secured party with respect to automobile was duly perfected in Arizona and Texas prior to time debtor brought automobile to Oklahoma and where Oklahoma certificate of title was prepared but not issued in Oklahoma, under UCC § 9-103(4), accomplished perfection in Arizona or Texas would continue in Oklahoma and security interest of secured party was superior to claim of subsequent creditor in Oklahoma. McMillin v. Phoenix Telco Fed. Credit Union, 429 F. Supp. 131 (W.D. Okla. 1976) (applying Oklahoma law).

Under UCC § 9-103, holder of security interest in automobile, perfected pursuant to laws of Minnesota, a nontitle state, who had no knowledge of its removal to Nebraska, a title state, had priority over Nebraska purchaser without knowledge of such security interest who purchased automobile with clear Nebraska title within 4 months of its arrival in Nebraska; UCC § 9-103, Official Comment 7, makes it clear that subsection (4) does not apply to automobile which was sold under conditional sales contract in state which does not require indication on certificate of title of any security interest in property as condition of perfection, and which was subsequently brought into state which had such requirement; thus, in present case, pursuant to UCC § 9-103(3), question of whether plaintiff had

perfected security interest in automobile when it was brought to Nebraska was governed by Minnesota law. Community Credit Co. v. Gillham, 191 Neb. 198, 214 N.W.2d 384 (1974), overruled on other grounds, Novak v. Nelsen, 209 Neb. 728, 311 N.W.2d 8 (1981).

Subsection (4) does not apply to an automobile which was sold under a conditional sales contract in a state that does not require indication on a certificate of title of any security interest as a condition of perfection, although the automobile was subsequently brought into a state which had such a requirement. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

Under subsection (3) of this section the New York assignee of a conditional sales contract who has filed the contract in accordance with the then existing Uniform Commercial Code had made its reservation of title valid against all persons under New York Law as that state did not require a notation of the seller's interest to appear on the title certificate, and at time the car buyer purported to sell it in Pennsylvania, the assignee held a perfected security interest in the car in that state. Al Maroone Ford, Inc. v. Manheim Auto Auction, Inc., 205 Pa. Super. 154, 208 A.2d 290 (1965).

24. —Between title states.

Where (1) buyer purchased 1974 pickup truck on July 12, 1974, (2) secured party perfected security interest therein under New York law by obtaining certificate of title on which secured party's lien was noted, (3) buyer moved from New York to Oklahoma on June 13, 1975, and applied for and received Oklahoma certificate of title for such truck without surrendering New York certificate of title, which was still in secured party's possession in New York, (4) buyer was adjudicated bankrupt on October 18, 1976, and (5) secured party, as of date of buyer's adjudication of bankruptcy, had not filed any financing statement in Oklahoma reflecting its security interest in truck, court held that bankruptcy judge did not err in holding that notation of secured party's lien on New York certificate of title, which remained outstanding and unsurrendered on buyer's relocation to Oklahoma, was not sufficient to maintain secured party's perfected security interest in truck under UCC § 9-103(4). In such case, UCC § 9-103(3)-providing that previously perfected security interest in property subsequently brought into a second state continues perfected in second state for four months, after which it must be reperfected in second state-applies, and since secured party had never filed financing statement concerning truck in Oklahoma, it had no perfected security interest in truck as of date on which debtor was adjudicated bankrupt. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

Where (1) Canadian creditor, which was assignee of buyer's automobile-purchase contract with Canadian dealer, perfected its lien on vehicle under Canadian law, (2) buyer acquired Canadian certificate of registration which did not require notation thereon of creditor's security interest, (3) buyer drove car to New Jersey, where he changed Canadian registration to New Jersey registration and fraudulently obtained "clean" New Jersey certificate of title which showed no liens on vehicle, (4) buyer within four days after purchasing vehicle sold it to New Jersey used-car dealer, which in turn sold it to one of its customers, and (5) Canadian creditor sued New Jersey dealer for conversion, court would hold, on reinstating trial court's granting of summary judgment for plaintiff, (1) that New Jersey UCC § 9-103(3) and (4) should be interpreted to protect interest of foreign lienholder, (2) that priority of plaintiff's perfected security interest under Canadian law was not defeated by original buyer's fraudulent securing of "clean" New Jersey certificate of title, and (3) that defendant dealer and professional buyer, which in good faith purchased vehicle with "clean" certificate of title, was not entitled to prevail over plaintiff which held valid but undisclosed foreign lien. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978) (noting that New Jersey had not adopted 1972 amendment of UCC § 9-103).

Auto subject to security interest perfected under Oklahoma law was brought into Texas without knowledge or consent of owners or holder of security interest;

Texas certificate of title was issued to plaintiff dealer's predecessor in interest; held, dealer took subject to outstanding security interest. Phil Phillips Ford, Inc. v. St. Paul Fire & Marine Ins. Co., 454 S.W.2d 465 (Tex. Civ. App. 1970), aff'd, 465 S.W.2d 933, 42 A.L.R.3d 1158 (Tex. 1971) (superseded by statute as stated in Rutherford v Whataburger, Inc. (CA 5th Dist) 601 SW2d 441).

Truck was not sold in ordinary course of business; buyer had no knowledge of Florida source of origin of truck; buyer inquired of seller and checked proper county offices in New York and found that no liens had been filed against truck; Florida bank held chattel mortgage on truck; bank had permitted seller, who had acquired title in Florida, to register title in New York; both New York and Florida are title states; seller had failed to use proceeds of sale to pay off lien; held, lien of bank was subordinated to buyer's purchase interest. Seely v. First Bank & Trust, 64 Misc. 2d 845 (1970).

25. —Between nontitle states.

Where finance company had perfected security interest in automobile in Oklahoma, a non-title state, car was registered in Alabama, also a non-title state, and then certificate of title was issued in Georgia, a certificate of title state, which showed no security interest, and vehicle was subsequently sold to purchaser in Alabama within four months after vehicle was removed from Oklahoma, finance company's security interest was in full force and effect in Alabama when purchaser bought car and, hence, finance company's claim was superior to that of purchaser. GMAC v. Long-Lewis Hdwe. Co., 54 Ala. App. 188, 306 So. 2d 277 (Civ. App. 1974), cert. denied, 293 Ala. 752, 306 So. 2d 282 (1974).

RESEARCH REFERENCES

ALR. Construction and application of statutory provision respecting registration of mortgages or other liens on personal property in case of residents of other states. 10 A.L.R.2d 764.

Conflict of laws as to chattel mortgages and conditional sales of chattels. 13 A.L.R.2d 1312.

Elements and proof of crime of improper sale, removal, concealment, or disposal of property subject to security interest under UCC. 48 A.L.R.4th 819.

Am Jur. 15A Am. Jur. 2d, Commercial Code §§ 11, 74.

16 Am. Jur. 2d, Conflict of Laws §§ 32, 39, 40.

68A Am. Jur. 2d, Secured Transactions §§ 4, 5, 33-35.

Application and construction of code, 6 Am. Jur. Pl & Pr Forms (Rev), General Provisions, Form 1:1.

Applicability, in general, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:7, 9:10.

Filing; place; erroneous filing, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:613, 9:619.

Accounts, [contract rights,] general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:1819 et seq.

CJS. 79 C.J.S., Secured Transactions § 6.

15A C.J.S., Conflict of Laws § 27 et seq.

§ 75-9-302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

SOURCES: Former 1972 Code § 75-9-302 [Codes, 1942, § 41A:9-302; Laws, 1966, ch. 316, § 9-302; Laws, 1977, ch. 452, § 15; Laws, 1986, ch. 401, § 1; Laws, 1990, ch. 384, § 50; Laws, 1996, ch. 468, § 62, eff from and after July 1, 1996] is now found in comparable provisions enacted at §§ 75-9-309, 75-9-310, and 75-9-311 by Laws, 2001, ch. 495, § 1. Present § 75-9-302 was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Description of property, see § 75-9-108.

Definitions, see § 75-9-201.

Filing provisions and agricultural liens, see § 75-9-310.

Priorities among conflicting security interests in and agricultural liens on same collateral, see § 75-9-322.

Priority of security interests in fixtures and crops, see § 75-9-334.

§ 75-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

SOURCES: Former 1972 Code § 75-9-303 [Codes, 1942, § 41A:9-303; Laws, 1966, ch. 316, § 9-303; Laws, 1996, ch. 468, § 64, eff from and after July 1, 1996] is now found in comparable provisions enacted at § 75-9-308 by Laws, 2001, ch. 495, § 1. Present § 75-9-303 was derived from former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6, eff from and after April 1, 1978; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Scope of Article, see § 75-9-109.

Priority of security interests in goods covered by certificate of title, see § 75-9-337.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

A. In General.

6. Generally.
7. Controlling law.
8. —Conflict of laws.
9. —Agreement of parties.
10. Perfection.
11. —Filing in debtor's principal place of business.
12. Security interest in accounts and contract rights.
13. Miscellaneous.

B. Mobile Goods.

14. Generally.
15. Incoming goods subject to security interest.
16. Four month rule.
17. —Priority.
18. —Lapse of perfection.
19. —Particular examples.
20. Thirty day rule.
21. Movement of property covered by certificate of title.
22. —Title to nontitle state.
23. —Nontitle to title state.
24. —Between title states.
25. —Between nontitle states.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

A. In General.

6. Generally.

This section deals with accounts, contract rights and equipment relating to another state, and incoming goods already subject to a security interest. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

The institution of distraint proceedings obviously does not fall within the intendment of this section. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

7. Controlling law.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

In debtor's action to enjoin creditor from enforcing two security agreements against collateral therefor, where evidence showed (1) that debtor and creditor had entered into such security agreements and that one of them had been perfected in several states, including New Jersey, (2) that second security agreement had in no way diminished validity of first security agreement, (3) that debtor's reason for seeking injunction against enforcement of such security agreements was creditor's alleged oral agreement to refrain from foreclosing on any debts due it in order to allow debtor to attain a healthy operating condition, (4) that creditor, after concluding that debtor could not attain a healthy operating condition, formally declared debtor to be in default under such security agreements and to owe creditor over $27 million in principal debt and (5) that creditor had then accelerated maturity of all of debtor's term obligations and demanded payment of all principal and interest on debtor's demand obligations, court held (1) that debtor's claim of alleged oral agreement to refrain from foreclosure was unsupported by the evidence, (2) that under (a) UCC § 1-105(1), dealing with power of parties to choose law applicable to their transactions, (b) UCC § 9-102(1), which intends that substantive law of place where collateral is located governs without regard to possible contracts in other jurisdictions, and (c) UCC § 9-103, which lays down numerous choice-of-law rules regarding creation, perfection, and priorities in multistate security-agreement transactions, law of New Jersey governed security agreements in suit, (3) that security interests created by security agreements in suit were valid, (4) that debtor had failed to show any reason for granting injunctive relief against their enforcement and (5) that on debtor's default, creditor under UCC § 9-501(1), as adopted in New Jersey, had right to reduce its claim to judgment and to foreclose on the collateral. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (applying New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Recognition of the title certificate issued in the state of origin and perfection of the security interest noted thereon can continue only as long as the title certificate of the state of origin is the only certificate. Once a new certificate is issued in a second state, it becomes, under UCC § 9-103(4), "the jurisdiction which issued the certificate," and its law governs the perfection of a security interest. The underlying rationale of UCC § 9-103(4) is that there shall be only one title certificate for an automobile, which is that originally issued if it is still in existence. However, once a second certificate of title has been issued by a second state, it is the law of the second state which determines whether a perfected security interest exists in the vehicle, and the creditor must comply with the law of the second state in order to perfect his security interest. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

The exclusiveness of the Vehicle Code registration and transfer requirements for perfection of security interests in automobiles is provided for under the Uniform Commercial Code § 9103(4). Morris Plan Co. v. Moody, 266 Cal. App. 2d 28 (4th Dist. 1968).

In a case where the issue was to whether plaintiff had been guilty of a breach of contract in making instalment payments on the purchase of an airplane so as to give the seller a right to repossess the plane, the question as to whether Massachusetts law applied to the transaction was to be determined under subsection (1) of § 1-105 of the instant chapter and not under subsection (2) of said section and the reference therein to §§ 9-102 and 9-103 applicable to secured transactions because the issues in such case involved the duties of the parties under the primary obligation, and because the validity or perfection of the security interest were not involved. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

In a case where the issue is as to whether a buyer was in default under a contract of sale so as to give the seller a right to repossess the article sold, and where there is no issue as to the validity or perfection of a security interest, the question as to which law is to be applied to the transaction is governed by § 1-105(1) of the instant chapter and not by subsection (2) of the instant section. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

8. —Conflict of laws.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Large earth-moving trucks unquestionably belong in classification of "road building equipment", "construction machinery", "automotive equipment", or all these classifications; held, where it is conceded that debtor has chief place of business in Colorado, law of that state, including law on conflicts, must govern with respect to conflicting claims to trucks taken as trade-in by dealer in connection with sale of other construction equipment to buyer in good faith. GECC v. R.A. Heintz Constr. Co., 302 F. Supp. 958 (D. Or. 1969) (applying Colorado law).

If chief place of business of debtor is not in this state, law, including conflict-of-law rules, of jurisdiction where such chief place of business is located governs perfection of security interest and possibility and effect of proper filing with regard to construction machinery. GECC v. Western Crane & Rigging Co., 184 Neb. 212, 166 N.W.2d 409 (1969).

By adopting Illinois law, contract adopted Illinois conflicts rule of law, so that validity of security interest in goods under contract was to be determined by Indiana law, where goods were taken into Indiana within 30 days of attachment of security interest and where parties understood that property would be kept in Indiana. In re Kokomo Times Publishing & Printing Corp., 301 F. Supp. 529 (S.D. Ind. 1968).

Where it had not adopted the Uniform Trust Receipts Act, the State of Georgia would not be bound to accept the procedural aspects of the Tennessee Act relative to recordation. Chattanooga Disct. Corp. v. West, 219 F. Supp. 140 (N.D. Ala. 1963) (applying Georgia law).

9. —Agreement of parties.

While as between themselves the parties to a security interest transaction may lawfully agree as to the governing law, where the rights of third party creditors in the property of one of the parties are in question, the law of the state of the domicil or place of business of the contracting party in question is controlling. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

10. Perfection.

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4). Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust & Sav. Bank, 357 So. 2d 654 (Ala. 1978) (Also rejecting defendants' content on that Alabama UCC § 9-103(4) was inapplicable because Illinois certificate of title had not been issued when vehicle entered Alabama, since such interpretation would nullify "relation-back" features of Illinois certificate-of-title law).

Secured party who had perfected security interest on property in South Dakota, but who did not file and perfect his interest in Iowa within four-month period after goods were transported to Iowa, had junior interest to buyer for value who purchased goods within four-month period, but who had no knowledge or notice of security interest, after lapse of four months without perfection of security interest in Iowa. United States v. Squires, 378 F. Supp. 798 (S.D. Iowa 1974) (citing annotation; applying Iowa law).

Plaintiff had properly filed security agreement perfecting security interest; defendant later perfected security interest by taking possession pursuant to agreement giving defendant right to use machine at issue until completion of work; held, plaintiff was entitled to machine when purchaser filed petition for arrangement under Bankruptcy Act while machine was in defendant's possession. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970) (applying New Jersey law).

When the holder of a security interest perfects the same, subsequent purchasers and encumbrancers are charged with notice of such perfected interest. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

11. —Filing in debtor's principal place of business.

In conversion action to determine priority of security interests in bulldozer and right to proceeds from its sale, where (1) bulldozer was sold in Michigan to Michigan buyer which gave seller an Indiana address, (2) buyer at time of sale was authorized to do business in Indiana and was mainly engaged in developing Indiana property, (3) seller assigned its security agreement listing bulldozer as collateral to plaintiff, and plaintiff filed financing statement with Indiana secretary of state, (4) defendant thereafter obtained security interest in bulldozer under security agreement with buyer, who listed it as collateral for loan from defendant, and filed financing statement with Michigan secretary of state, and (5) plaintiff then filed financing statement in Michigan after defendant's filing, court held (1) that Indiana was buyer's "chief place of business" under UCC § 9-103(2), (2) that Indiana therefore was proper place to file financing statement to perfect security interest in bulldozer, and (3) that since only plaintiff had perfected its security interest in Indiana, judgment was properly entered in plaintiff's favor. Associates Fin. Servs. Co. v. First Nat'l Bank, 82 Mich. App. 495, 266 N.W.2d 490 (1978).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973) (applying Kansas law).

The mobility of tractors, normally used in more than one jurisdiction, makes filing in debtor's principal place of business necessary under UCC § 9-103(2) in order to perfect security interest therein, and bank which had not so filed could not prevail over tractor buyer's judgment creditor who levied against tractors in possession of buyer. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Where New Jersey was chief place of business of debtor which had entered into security agreement as to traxcavator, a heavy construction machine, rights of parties were governed by New Jersey law. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970).

12. Security interest in accounts and contract rights.

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

13. Miscellaneous.

Since Illinois vehicle code provided exclusive means of perfecting and giving notice of security interest in motor vehicles, failure of Illinois seller of used automobile to note bank's lien on vehicle's certificate of title resulted in failure of bank's security interest to come into existence, thereby rendering inappropriate seller's references to Illinois Uniform Commercial Code in seller's action to replevy vehicle. Huber Pontiac, Inc. v. Wells, 59 Ill. App. 3d 14, 375 N.E.2d 149 (4th Dist. 1978).

Transaction between contractor and surety for completion of public improvement project following contractor's default was not intended to have effect as security. Aetna Cas. & Sur. Co. v. Perrotta, 62 Misc. 2d 252 (1970).

The lien of a common carrier for the cost of transporting a house trailer from Virginia to Oklahoma was subordinate to a prior security interest perfected in Virginia of which the carrier was charged with notice. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

B. Mobile Goods.

14. Generally.

Industrial equipment may not be characterized as mobile goods within meaning of Code § 9-103(2). In re Dennis Mitchell Indus., Inc., 419 F.2d 349 (3d Cir. Pa. 1969) (applying Pennsylvania law).

15. Incoming goods subject to security interest.

A security interest in a house trailer perfected in Virginia before the trailer was moved to Oklahoma was effective in the latter state under subsec. (3). National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

An assignee of a conditional sales agreement made in New York is protected as against a purchaser of the security in Pennsylvania for a period of four months provided that the security interest was perfected in New York before the security was brought into Pennsylvania. Casterline v. GMAC, 195 Pa. Super. 344, 171 A.2d 813 (1961).

16. Four month rule.

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Where (1) Pennsylvania seller sold boat to Pennsylvania buyer and delivered it to buyer in Maryland, (2) secured party, which had financed purchase of boat by conditional sales contract, perfected its security interest in boat by filing financing statement in Pennsylvania (3) buyer resold boat to third person in Maryland, (4) seller, as representative of secured party, thereafter came to Maryland, took possession of boat, and returned it to seller's premises in Pennsylvania, and (5) second buyer brought replevin action to recover possession of boat, court held (1) that under UCC § 9-103(3), secured party's security interest in boat, which had been perfected under Pennsylvania law, was also perfected for four months under Maryland law, (2) that after such four-month period had run, secured party's failure to file financing statement in Maryland caused its security interest to become unperfected, and (3) that under UCC § 9-301(1)(c), such unperfected interest was subordinate to rights of second buyer, who was buyer not in ordinary course of business who gave value and received delivery of the collateral without knowledge of security interest therein and before such interest was reperfected in

Maryland. Wind v. Westinghouse Credit Corp., 260 Pa. Super. 385, 394 A.2d 980 (1978).

The majority of courts which have considered the question have concluded that UCC § 9-103(4) does not apply to all security interests, but only to those which attach after the certificate of title is issued. It may be argued that the statute, as thus interpreted, permits a person in possession of personal property to defraud an innocent purchaser. But it must be kept in mind that the legislature, in adopting the Uniform Commercial Code, sought to strike a balance between the interests of the prior lienholder and those of a subsequent, good-faith purchaser or creditor. In order to afford some protection to the party with the prior interest, he is given, under UCC § 9-103(3), a period of four months in which to perfect his interest in this state. After that, his priority is lost until he perfects the interest. If this protection is given, a prospective purchaser or creditor has the burden of making sure that the property has been located in this state for more than four months. Associates Realty Credit, Ltd. v. Brune, 89 Wash. 2d 6, 568 P.2d 787 (1977).

One who takes title to incoming auto subject to security interest of assignee of conditional vendor during four months from time auto entered jurisdiction cannot prevail over assignee under UCC § 9-103(3). Newton-Waltham Bank & Trust Co. v. Bergen Motors, Inc., 68 Misc. 2d 228 (1971), aff'd, 75 Misc. 2d 103, 347 N.Y.S.2d 568 (1972).

17. —Priority.

Lien created in Massachusetts enjoyed superiority in New York for period of 4 months from date auto arrived in New York without any further measures being undertaken by conditional vendor's assignee, who sought to recover from New York purchaser, to localize such foreign security interest. Newton-Waltham Bank & Trust Co. v. Bergen Motors, Inc., 68 Misc. 2d 228 (1971), aff'd, 75 Misc. 2d 103, 347 N.Y.S.2d 568 (1972).

Where cattle here in question were transported from Utah to Wyoming within 4 months of their delivery to debtor, under Wyoming Code, creditor's security interest perfected under laws of Utah is superior to any rights of innocent purchasers. Utah Farm Prod. Credit Ass'n v. Dinner, 302 F. Supp. 897 (D. Colo. 1969) (applying Wyoming law).

18. —Lapse of perfection.

Where holder of security interest in automobile which was perfected under Texas law did not reperfect its security interest within four-month period after automobile was brought into Arizona, interests of persons who purchased automobile during that four-month period were not subject to such security interest. Arrow Ford, Inc. v. Western Landscape Constr. Co., 23 Ariz. App. 281, 532 P.2d 553 (1975).

Goods having been removed directly to New Jersey, failure to file financing statement in that state clearly renders security interest unperfected at end of four months even if court considered security interest to have been originally perfected in Pennsylvania; held, four months' period begins to run whether or not secured party has notice that collateral has been removed to another jurisdiction. In re Dennis Mitchell Indus., Inc., 419 F.2d 349 (3d Cir. Pa. 1969) (applying New York law).

19. —Particular examples.

Where (1) plaintiff Farmers Home Administration made loan to Mississippi farmer and properly perfected security interest in Mississippi in all of farmer's livestock, (2) farmer, without knowledge or approval of plaintiff, shipped livestock from Mississippi to Tennessee to be sold, (3) livestock, within four months of their removal to Tennessee, were sold to bona-fide purchasers by defendant livestock broker, (4) farmer did not apply sale proceeds to plaintiff's loan and defaulted on loan payments, and (5) plaintiff took no action to perfect its security interest in Tennessee, court held (1) that Uniform Commercial Code should be adopted as relevant federal common law in Farmers Home Administration security-interest cases; (2) that if there should be lack of uniformity on particular issue, either because of nonuniform changes in UCC itself or because of differing interpretations of a uniform provision, court would ordinarily follow weight of authority; (3) that in present case, since right of plaintiff to recover in conversion against defendant depended on which of two interpretations should be given to four-months protection rule in UCC § 9-103(3), court would adopt interpretation favored by weight of authority, which is that UCC § 9-103(3) gives secured party four months of "absolute protection" in removal state without necessity of any additional filing in removal state at any time; and (4) that since defendant had sold livestock within four months of their removal to Tennessee, judgment would be entered for plaintiff. United States v. Burnette-Carter Co., 575 F.2d 587 (6th Cir. Tenn. 1978), cert. denied, 439 U.S. 996, 99 S. Ct. 596, 58 L. Ed. 2d 669 (1978).

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Perfected purchase money security interest from foreign state is not enforceable in Florida unless perfected within four-month period; this is clear legislative intent under UCC § 9-103(3) despite apparent injustice to holder of purchase money security interest who fails to register lien in Florida after motor vehicle is moved thereto. GECC v. Hollywood Bank & Trust Co., 263 So. 2d 593 (Fla. App. 1972).

The innocent purchaser in New Jersey of an automobile subject to a security interest perfected in New York takes the vehicle subject to the rights of an assignee of the original New York conditional vendor where the transaction in New Jersey took place within four months after the conditional vendee had removed the automobile to that state, even though the security interest had not then been perfected in New Jersey, for the four month period provided by subsec. (3) is an absolute period of protection of the vendor's security interest. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

A conditional vendor who fails to perfect his security interest within the four-month period provided by subsec. (3) is no longer protected, and a subsequent purchaser of the property for value and without notice of the security interest would take a superior title. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

20. Thirty day rule.

In bankruptcy proceeding involving conflicting interests in car purchased by debtor in Illinois prior to being declared bankrupt in Georgia, where (1) debtor created security interest in vehicle which holder duly perfected under Illinois statute that required such interest to be perfected by noting it on vehicle's certificate of title; (2) debtor at time of purchase informed secured party that debtor would remove vehicle to Georgia within 30 days for purposes other than transportation and debtor did remove it within such time, but secured party did not take any steps to perfect such security interest in Georgia; (3) debtor's trustee in bankruptcy claimed superior interest in vehicle under provision of Georgia certificate-of-title statute which declared that Georgia law would determine validity of out-of-state security interest in vehicle brought into Georgia if parties understood at time interest was created that vehicle would be kept in Georgia and vehicle was brought into Georgia within 30 days thereafter for purposes other than transportation; (4) secured party claimed superior interest in vehicle under another provision of the Georgia certificate-of-title statute which provided that security interest perfected under law of jurisdiction where vehicle was situated when interest attached would continue perfected in Georgia if name of holder of interest was shown on certificate of title issued by such other jurisdiction; and (5) secured party also contended that in light of Georgia version of UCC § 9-103(3), term "validity of security interest" in statutory provision on which bankruptcy trustee based claim to vehicle in suit was not synonymous with "perfection of security interest," so as to sustain trustee's claim, federal court would certify to Supreme Court of Georgia question whether holder of security interest in vehicle in suit was also required to obtain Georgia certificate of title for such vehicle and to note thereon its security interest in order to protect it against claim of bankruptcy trustee. In re McClintock, 558 F.2d 732 (5th Cir. Ga. 1977), appeal decided, 571 F.2d 317 (5th Cir. Ga. 1978) (certifying question of Georgia law determinative of cause to Supreme Court of Georgia).

21. Movement of property covered by certificate of title.

Where bankrupt, using money borrowed from New York bank, purchased second hand truck in Ohio and acquired clean certificate of title in Ohio, bank's security interest not being noted on title certificate as required by Ohio law, bankrupt registered vehicle in Ohio using title certificate, although bank knew nothing of Ohio registration and title certificate nor of bankrupt's intention to register vehicle there, and although truck was garaged principally in New York, in accordance with UCC § 9-103(4) law of Ohio determined existence of perfected security interest prior to bank's lawful repossession of truck in state of New York and bank, therefore, did not obtain perfected security interest in New York by filing financing statement in New York. In re Osborn, 389 F. Supp. 1137 (N.D.N.Y. 1975) (applying New York law).

Under Virginia UCC, perfection of security interest would be governed by law of jurisdiction which issued certificate of title on mobile home, which in this case was West Virginia. In re Smith, 311 F. Supp. 900 (W.D. Va. 1970), aff'd, 437 F.2d 898 (4th Cir. Va. 1971).

UCC § 9-103(4) unequivocally removes application of UCC § 9-103(3) to any personal property covered by a certificate of title issued under a statute of any state which requires indication on a certificate of title of any security interest as a condition of perfection; in other words, one who has a security interest in personal property, perfected in a state which requires the issuance of a certificate of title on such property and the listing thereon of a security interest as a condition of perfection, does not have to protect such security interest by any further action in a state to which the property may thereafter be removed; this places an undue burden on prospective lienees in Alabama which does not have a registration and title statute; it appears the undue hardship to lenders in Alabama resulting from the effect of UCC § 9-103(4) was created by the legislature and must be removed by it, either by repeal, amendment, or passage of other correctional legislation. Deposit Nat'l Bank v. Chrysler Credit Corp., 48 Ala. App. 161, 263 So. 2d 139 (Civ. App. 1972).

UCC § 9-103(4) relating to perfection of security interests in other states is not repealed by motor vehicle code provision regarding certificate of title to auto, and controls where auto was purchased in Illinois and registered in Ohio, where mortgagee's security interest was noted on Ohio certificate of title, and where owner's judgment creditor knew of foreign registration and that there was some lien, so that mortgagee's security interest under UCC § 9-103(4) was superior to that of creditor. Town House Motel, Inc. v. Ward, 2 Ill. App. 3d 699, 276 N.E.2d 809 (5th Dist. 1971).

Once a security interest (lien) is noted upon a certificate of title in a state which requires such notation for perfection, security interest (lien) remains perfected when vehicle is removed to another state, even if debtor has not obtained new certificate of title in other state. Streule v. Gulf Fin. Corp., 265 A.2d 298 (D.C. 1970).

Where a house trailer was purchased in Virginia and the certificate of title issued by that state showed a bank's conditional sales contract as a lien thereon, it was unnecessary for the security holder to perfect its lien in New York within four months after the trailer was moved there, for subsection (4), rather than subsection (3) was controlling. In re White, 266 F. Supp. 863 (N.D.N.Y. 1967).

22. —Title to nontitle state.

Where bank had perfected security interest in automobile in Oklahoma, driver of car fraudulently obtained Oklahoma certificate of title which indicated there were no liens on vehicle, drove car to Nevada and sold it to defendant on May 15, 1971, trial court erred in dismissing bank's complaint for conversion of car on grounds that bank failed to prove car had been brought into Nevada within four-month period immediately preceding date when driver sold car to defendant, as prescribed by UCC § 9-103(3); evidence showed that driver took possession of automobile in Oklahoma in December, 1970, that he made two payments on vehicle which were mailed from Oklahoma, and that he obtained Oklahoma certificate of title in March, 1971, from which it could be inferred that automobile was in Oklahoma as late as March, 1971, within four months of time when defendant purchased it. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

Where Texas bank perfected security interest in automobile located in Texas, a title state, and gave owner permission to take car to New York, a nontitle state, and license it there, with understanding that it would not have to relinquish its Texas title, and where owner, after driving car to New York and obtaining clear New York title certificate, drove car to Washington, a title state, obtained clear Washington title and within four months after leaving Texas sold car to Washington purchaser, Texas law governed initial perfection of security interest and, regardless of whether Texas bank perfected its security interest in compliance with Washington law, its security interest continued under UCC § 9-103(3) to be perfected in Washington for first four months after car was brought into state and, thus, upon owner's default, Texas bank could lawfully repossess car from Washington buyer. Morris v. Seattle-First Nat'l Bank, 10 Wash. App. 129, 516 P.2d 1055 (1973).

23. —Nontitle to title state.

Under UCC § 9-103, holder of security interest in automobile, perfected pursuant to laws of Minnesota, a nontitle state, who had no knowledge of its removal to Nebraska, a title state, had priority over Nebraska purchaser without knowledge of such security interest who purchased automobile with clear Nebraska title within 4 months of its arrival in Nebraska; UCC § 9-103, Official Comment 7, makes it clear that subsection (4) does not apply to automobile which was sold under conditional sales contract in state which does not require indication on certificate of title of any security interest in property as condition of perfection, and which was subsequently brought into state which had such requirement; thus, in present case, pursuant to UCC § 9-103(3), question of whether plaintiff had

perfected security interest in automobile when it was brought to Nebraska was governed by Minnesota law. Community Credit Co. v. Gillham, 191 Neb. 198, 214 N.W.2d 384 (1974), overruled on other grounds, Novak v. Nelsen, 209 Neb. 728, 311 N.W.2d 8 (1981).

New Jersey UCC § 9-103(4) should only be applied to goods which, at the time of entry into New Jersey, are covered by a certificate of title. New Jersey UCC § 9-103(3) should apply to all goods which are moved into New Jersey from noncertificate-of-title jurisdictions. If a certificate of title is subsequently acquired, New Jersey UCC § 9-103(3) remains applicable according to its terms. And with respect to professional buyers of goods, the four-month grace period provided in New Jersey UCC § 9-103(3) is absolute, and bona-fide status is no protection. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978).

In action to foreclose chattel mortgage on mobile home that was assigned to plaintiff by party that financed purchase of such home in British Columbia, Canada, where (1) plaintiff's security interest in such home was perfected by filing under British Columbia law, which did not issue certificates of title to mobile homes; (2) purchasers breached chattel mortgage's provisions by taking home from British Columbia into state of Washington without consent of plaintiff chattel-mortgage holder and secured Washington certificate of title to such home by falsely representing that they owned it free of any lien or security interest therein; and (3) purchasers on basis of such certificate of title obtained loan from Washington lender and lender perfected security interest in home in accordance with Washington law, court would hold under UCC § 9-103(3) and (4), and also Washington statute dealing with perfection and loss of security interest where vehicle subject to interest had certificate of title, that as between the two holders of a perfected security interest in such home, holder of interest perfected in British Columbia had priority, since UCC § 9-103(4) does not apply to all security interests, but only to those that attached after certificate of title to vehicle was issued. Associates Realty Credit, Ltd. v. Brune, 89 Wash. 2d 6, 568 P.2d 787 (1977) (citing annotation; also holding that the holder of security interest perfected in British Columbia must first exhaust its Canadian security before resorting to proceeds of sale, in state of Washington, of mobile home in suit).

Where security interest of secured party with respect to automobile was duly perfected in Arizona and Texas prior to time debtor brought automobile to Oklahoma and where Oklahoma certificate of title was prepared but not issued in Oklahoma, under UCC § 9-103(4), accomplished perfection in Arizona or Texas would continue in Oklahoma and security interest of secured party was superior to claim of subsequent creditor in Oklahoma. McMillin v. Phoenix Telco Fed. Credit Union, 429 F. Supp. 131 (W.D. Okla. 1976) (applying Oklahoma law).

Subsection (4) does not apply to an automobile which was sold under a conditional sales contract in a state that does not require indication on a certificate of title of any security interest as a condition of perfection, although the automobile was subsequently brought into a state which had such a requirement. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

Under subsection (3) of this section the New York assignee of a conditional sales contract who has filed the contract in accordance with the then existing Uniform Commercial Code had made its reservation of title valid against all persons under New York Law as that state did not require a notation of the seller's interest to appear on the title certificate, and at time the car buyer purported to sell it in Pennsylvania, the assignee held a perfected security interest in the car in that state. Al Maroone Ford, Inc. v. Manheim Auto Auction, Inc., 205 Pa. Super. 154, 208 A.2d 290 (1965).

24. —Between title states.

Where (1) buyer purchased 1974 pickup truck on July 12, 1974, (2) secured party perfected security interest therein under New York law by obtaining certificate of title on which secured party's lien was noted, (3) buyer moved from New York to Oklahoma on June 13, 1975, and applied for and received Oklahoma certificate of title for such truck without surrendering New York certificate of title, which was still in secured party's possession in New York, (4) buyer was adjudicated bankrupt on October 18, 1976, and (5) secured party, as of date of buyer's adjudication of bankruptcy, had not filed any financing statement in Oklahoma reflecting its security interest in truck, court held that bankruptcy judge did not err in holding that notation of secured party's lien on New York certificate of title, which remained outstanding and unsurrendered on buyer's relocation to Oklahoma, was not sufficient to maintain secured party's perfected security interest in truck under UCC § 9-103(4). In such case, UCC § 9-103(3)-providing that previously perfected security interest in property subsequently brought into a second state continues perfected in second state for four months, after which it must be reperfected in second state-applies, and since secured party had never filed financing statement concerning truck in Oklahoma, it had no perfected security interest in truck as of date on which debtor was adjudicated bankrupt. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

Where (1) Canadian creditor, which was assignee of buyer's automobile-purchase contract with Canadian dealer, perfected its lien on vehicle under Canadian law, (2) buyer acquired Canadian certificate of registration which did not require notation thereon of creditor's security interest, (3) buyer drove car to New Jersey, where he changed Canadian registration to New Jersey registration and fraudulently obtained "clean" New Jersey certificate of title which showed no liens on vehicle, (4) buyer within four days after purchasing vehicle sold it to New Jersey used-car dealer, which in turn sold it to one of its customers, and (5) Canadian creditor sued New Jersey dealer for conversion, court would hold, on reinstating trial court's granting of summary judgment for plaintiff, (1) that New Jersey UCC § 9-103(3) and (4) should be interpreted to protect interest of foreign lienholder, (2) that priority of plaintiff's perfected security interest under Canadian law was not defeated by original buyer's fraudulent securing of "clean" New Jersey certificate of title, and (3) that defendant dealer and professional buyer, which in good faith purchased vehicle with "clean" certificate of title, was not entitled to prevail over plaintiff which held valid but undisclosed foreign lien. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978) (noting that New Jersey had not adopted 1972 amendment of UCC § 9-103).

Auto subject to security interest perfected under Oklahoma law was brought into Texas without knowledge or consent of owners or holder of security interest; Texas certificate of title was issued to plaintiff dealer's predecessor in interest; held, dealer took subject to outstanding security interest. Phil Phillips Ford, Inc. v. St. Paul Fire & Marine Ins. Co., 454 S.W.2d 465 (Tex. Civ. App. 1970), aff'd, 465 S.W.2d 933, 42 A.L.R.3d 1158 (Tex. 1971) (superseded by statute as stated in Rutherford v Whataburger, Inc. (CA 5th Dist) 601 SW2d 441).

Truck was not sold in ordinary course of business; buyer had no knowledge of Florida source of origin of truck; buyer inquired of seller and checked proper county offices in New York and found that no liens had been filed against truck; Florida bank held chattel mortgage on truck; bank had permitted seller, who had acquired title in Florida, to register title in New York; both New York and Florida are title states; seller had failed to use proceeds of sale to pay off lien; held, lien of bank was subordinated to buyer's purchase interest. Seely v. First Bank & Trust, 64 Misc. 2d 845 (1970).

25. —Between nontitle states.

Where finance company had perfected security interest in automobile in Oklahoma, a non-title state, car was registered in Alabama, also a non-title state, and then certificate of title was issued in Georgia, a certificate of title state, which showed no security interest, and vehicle was subsequently sold to purchaser in Alabama within four months after vehicle was removed from Oklahoma, finance company's security interest was in full force and effect in Alabama when purchaser bought car and, hence, finance company's claim was superior to that of purchaser. GMAC v. Long-Lewis Hdwe. Co., 54 Ala. App. 188, 306 So. 2d 277 (Civ. App. 1974), cert. denied, 293 Ala. 752, 306 So. 2d 282 (1974).

§ 75-9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

SOURCES: Former 1972 Code § 75-9-304 [Codes, 1942, § 41A:9-304; Laws, 1966, ch. 316, § 9-304; Laws, 1977, ch. 452, § 16; Laws, 1990, ch. 384, § 51; Laws, 1996, ch. 460, § 25; Laws, 1996, ch. 468, § 65, eff from and after July 1, 1996] is now found in comparable provisions enacted at § 75-9-312 by Laws, 2001, ch. 495, § 1. Present § 75-9-304 was derived from 1972 Code § 75-8-110 [Laws, 1996, ch. 468, § 11, eff from and after July 1, 1996] and former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6, eff from and after April 1, 1978; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495; Laws, 2002, ch. 453, § 6, eff from and after passage (approved Mar. 20, 2002.)

Cross References — Priority of security interests in deposit account, see § 75-9-327.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

6. Generally.
7. Controlling law.
8. —Conflict of laws.
9. —Agreement of parties.
10. Perfection.
11. —Filing in debtor's principal place of business.
12. Security interest in accounts and contract rights.
13. Miscellaneous.

III. Under former § 75-9-305.

14. In general.
15. Goods.
16. Instruments.
17. Money.
18. Documents.
19. Chattel paper.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

6. Generally.

This section deals with accounts, contract rights and equipment relating to another state, and incoming goods already subject to a security interest. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

The institution of distraint proceedings obviously does not fall within the intendment of this section. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

7. Controlling law.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

In debtor's action to enjoin creditor from enforcing two security agreements against collateral therefor, where evidence showed (1) that debtor and creditor had entered into such security agreements and that one of them had been perfected in several states, including New Jersey, (2) that second security agreement had in no way diminished validity of first security agreement, (3) that debtor's reason for seeking injunction against enforcement of such security agreements was creditor's alleged oral agreement to refrain from foreclosing on any debts due it in order to allow debtor to attain a healthy operating condition, (4) that creditor, after concluding that debtor could not attain a healthy operating condition, formally declared debtor to be in default under such security agreements and to owe creditor over $27 million in principal debt and (5) that creditor had then accelerated maturity of all of debtor's term obligations and demanded payment of all principal and interest on debtor's demand obligations, court held (1) that debtor's claim of alleged oral agreement to refrain from foreclosure was unsupported by the evidence, (2) that under (a) UCC § 1-105(1), dealing with power of parties to choose law applicable to their transactions, (b) UCC § 9-102(1), which intends that substantive law of place where collateral is located governs without regard to possible contracts in other jurisdictions, and (c) UCC § 9-103, which lays down numerous choice-of-law rules regarding creation, perfection, and priorities in multistate security-agreement transactions, law of New Jersey governed security agreements in suit, (3) that security interests created by security agreements in suit were valid, (4) that debtor had failed to show any reason for granting injunctive relief against their enforcement and (5) that on debtor's default, creditor under UCC § 9-501(1), as adopted in New Jersey, had right to reduce its claim to judgment and to foreclose on the collateral. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (applying New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Recognition of the title certificate issued in the state of origin and perfection of the security interest noted thereon can continue only as long as the title certificate of the state of origin is the only certificate. Once a new certificate is issued in a second state, it becomes, under UCC § 9-103(4), "the jurisdiction which issued the certificate," and its law governs the perfection of a security interest. The underlying rationale of UCC § 9-103(4) is that there shall be only one title certificate for an automobile, which is that originally issued if it is still in existence. However, once a second certificate of title has been issued by a second state, it is the law of the second state which determines whether a perfected security interest exists in the vehicle, and the creditor must comply with the law of the second state in order to perfect his security interest. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

The exclusiveness of the Vehicle Code registration and transfer requirements for perfection of security interests in automobiles is provided for under the Uniform Commercial Code § 9103(4). Morris Plan Co. v. Moody, 266 Cal. App. 2d 28 (4th Dist. 1968).

In a case where the issue was to whether plaintiff had been guilty of a breach of contract in making instalment payments on the purchase of an airplane so as to give the seller a right to repossess the plane, the question as to whether Massachusetts law applied to the transaction was to be determined under subsection (1) of § 1-105 of the instant chapter and not under subsection (2) of said section and the reference therein to §§ 9-102 and 9-103 applicable to secured transactions because the issues in such case involved the duties of the parties under the primary obligation, and because the validity or perfection of the security interest were not involved. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

In a case where the issue is as to whether a buyer was in default under a contract of sale so as to give the seller a right to repossess the article sold, and where there is no issue as to the validity or perfection of a security interest, the question as to which law is to be applied to the transaction is governed by § 1-105(1) of the instant chapter and not by subsection (2) of the instant section. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

8. —Conflict of laws.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v.

Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Large earth-moving trucks unquestionably belong in classification of "road building equipment", "construction machinery", "automotive equipment", or all these classifications; held, where it is conceded that debtor has chief place of business in Colorado, law of that state, including law on conflicts, must govern with respect to conflicting claims to trucks taken as trade-in by dealer in connection with sale of other construction equipment to buyer in good faith. GECC v. R.A. Heintz Constr. Co., 302 F. Supp. 958 (D. Or. 1969) (applying Colorado law).

If chief place of business of debtor is not in this state, law, including conflict-of-law rules, of jurisdiction where such chief place of business is located governs perfection of security interest and possibility and effect of proper filing with regard to construction machinery. GECC v. Western Crane & Rigging Co., 184 Neb. 212, 166 N.W.2d 409 (1969).

By adopting Illinois law, contract adopted Illinois conflicts rule of law, so that validity of security interest in goods under contract was to be determined by Indiana law, where goods were taken into Indiana within 30 days of attachment of security interest and where parties understood that property would be kept in Indiana. In re Kokomo Times Publishing & Printing Corp., 301 F. Supp. 529 (S.D. Ind. 1968).

Where it had not adopted the Uniform Trust Receipts Act, the State of Georgia would not be bound to accept the procedural aspects of the Tennessee Act relative to recordation. Chattanooga Disct. Corp. v. West, 219 F. Supp. 140 (N.D. Ala. 1963) (applying Georgia law).

9. —Agreement of parties.

While as between themselves the parties to a security interest transaction may lawfully agree as to the governing law, where the rights of third party creditors in the property of one of the parties are in question, the law of the state of the domicil or place of business of the contracting party in question is controlling. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

10. Perfection.

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4). Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust & Sav. Bank, 357 So. 2d 654 (Ala. 1978) (Also rejecting defendants' content on that Alabama UCC § 9-103(4) was inapplicable because Illinois certificate of title had not been issued when vehicle entered Alabama, since such interpretation would nullify "relation-back" features of Illinois certificate-of-title law).

Secured party who had perfected security interest on property in South Dakota, but who did not file and perfect his interest in Iowa within four-month period after goods were transported to Iowa, had junior interest to buyer for value who purchased goods within four-month period, but who had no knowledge or notice of security interest, after lapse of four months without perfection of security interest in Iowa. United States v. Squires, 378 F. Supp. 798 (S.D. Iowa 1974) (citing annotation; applying Iowa law).

Plaintiff had properly filed security agreement perfecting security interest; defendant later perfected security interest by taking possession pursuant to agreement giving defendant right to use machine at issue until completion of work; held, plaintiff was entitled to machine when purchaser filed petition for arrangement under Bankruptcy Act while machine was in defendant's possession. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970) (applying New Jersey law).

When the holder of a security interest perfects the same, subsequent purchasers and encumbrancers are charged with notice of such perfected interest. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

11. —Filing in debtor's principal place of business.

In conversion action to determine priority of security interests in bulldozer and right to proceeds from its sale, where (1) bulldozer was sold in Michigan to Michigan buyer which gave seller an Indiana address, (2) buyer at time of sale was authorized to do business in Indiana and was mainly engaged in developing Indiana property, (3) seller assigned its security agreement listing bulldozer as collateral to plaintiff, and plaintiff filed financing statement with Indiana secretary of state, (4) defendant thereafter obtained security interest in bulldozer under security agreement with buyer, who listed it as collateral for loan from defendant, and filed financing statement with Michigan secretary of state, and (5) plaintiff then filed financing statement in Michigan after defendant's filing, court held (1) that Indiana was buyer's "chief place of business" under UCC § 9-103(2), (2) that Indiana therefore was proper place to file financing statement to perfect security interest in bulldozer, and (3) that since only plaintiff had perfected its security interest in Indiana, judgment was properly entered in plaintiff's favor. Associates Fin. Servs. Co. v. First Nat'l Bank, 82 Mich. App. 495, 266 N.W.2d 490 (1978).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973) (applying Kansas law).

The mobility of tractors, normally used in more than one jurisdiction, makes filing in debtor's principal place of business necessary under UCC § 9-103(2) in order to perfect security interest therein, and bank which had not so filed could not prevail over tractor buyer's judgment creditor who levied against tractors in possession of buyer. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Where New Jersey was chief place of business of debtor which had entered into security agreement as to traxcavator, a heavy construction machine, rights of parties were governed by New Jersey law. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970).

12. Security interest in accounts and contract rights.

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

13. Miscellaneous.

Since Illinois vehicle code provided exclusive means of perfecting and giving notice of security interest in motor vehicles, failure of Illinois seller of used automobile to note bank's lien on vehicle's certificate of title resulted in failure of bank's security interest to come into existence, thereby rendering inappropriate seller's references to Illinois Uniform Commercial Code in seller's action to replevy vehicle. Huber Pontiac, Inc. v. Wells, 59 Ill. App. 3d 14, 375 N.E.2d 149 (4th Dist. 1978).

Transaction between contractor and surety for completion of public improvement project following contractor's default was not intended to have effect as security. Aetna Cas. & Sur. Co. v. Perrotta, 62 Misc. 2d 252 (1970).

The lien of a common carrier for the cost of transporting a house trailer from Virginia to Oklahoma was subordinate to a prior security interest perfected in Virginia of which the carrier was charged with notice. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

III. Under former § 75-9-305.

14. In general.

Under UCC, parties to security agreement were free to decide who should have right to possession of collateral. American Honda Motor Co. v. United States, 363 F. Supp. 988 (S.D.N.Y. 1973).

Bare possession of checks was sufficient to create security interest under § 9-305. Barney v. Rigby Loan & Inv. Co., 344 F. Supp. 694 (D. Idaho 1972).

Under the statute, the actions of one seeking to repossess certain personal property from a defaulting vendee were insufficient to perfect the vendor's security interest. L.B. Smith, Inc. v. Foley, 341 F. Supp. 810 (W.D.N.Y. 1972).

15. Goods.

The filing of a financing statement is unnecessary to perfect a security interest in United States coins having a numismatic value in excess of their face value, pledged with and delivered to a bank as collateral for a loan; for such coins are to be considered as "goods" rather than as a medium of exchange. In re Midas Coin Co., 264 F. Supp. 193 (E.D. Mo. 1967), aff'd, 387 F.2d 118 (8th Cir. Mo. 1968).

16. Instruments.

In an action by a bank against a purchaser of truck bodies to obtain monies paid by the purchaser to the Internal Revenue Service after the IRS had issued a tax levy against funds owing to the seller of truck bodies, the trial court properly granted judgment for the bank where the contract between the seller and the purchaser had been delivered, assigned and accepted by the bank to secure a loan to the seller and, thereby, gave the bank a perfected security interest in the contract, an instrument under § 75-9-105, which held priority over the tax lien of the IRS which had never been filed at the principal place of business of the taxpayer. International Harvester Co. v. Peoples Bank & Trust Co., 402 So. 2d 856 (Miss. 1981).

Where a security interest in the proceeds of promissory notes was perfected before the holder of that interest received notice of the existence of a previously filed Internal Revenue Service lien, the holder's right to the proceeds of the notes is not affected by the lien. Lipkowitz & Plaut v. Affrunti, 95 Misc. 2d 849 (1978).

Where two certificates of deposit were indorsed in blank by owners and delivered to bank to enable third party to obtain line of credit from bank; where in connection with delivery of certificates, owners thereof also simultaneously executed two instruments entitled "Consent to Pledge" and "Security Agreement-Pledge" which specifically described collateral (the two certificates of deposit) for proposed extension of credit by bank; and where bank in reliance on such instruments and delivery of the collateral advanced desired line of credit to third party, effect of transaction under UCC § 9-304(1) and § 9-305 was to create and perfect valid security interest in certificates in favor of bank which was enforceable under UCC § 9-203(1). Montavon v. Alamo Nat'l Bank, 554 S.W.2d 787 (Tex. Civ. App. 1977).

When bank surrendered possession of note which it had held as security for loan for more than a year, bank lost security interest which it had previously held. McIlroy Bank v. First Nat'l Bank, 252 Ark. 558, 480 S.W.2d 127 (1972).

17. Money.

A security interest in money (either originally given or received as proceeds from the negotiation of an instrument) is perfected by possession, and a deposit made by lessee with lessor to secure performance of lease could be set of against lessor's claim against bankrupt lessee. In re Atlanta Times, Inc., 259 F. Supp. 820 (N.D. Ga. 1966), aff'd, 383 F.2d 606 (5th Cir. Ga. 1967).

Financing statements are not required to be filed to perfect possessory security interest in money; security interests in money can only be perfected by possession. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

A bankruptcy debtor's pre-petition payment to law firms, and their retention of retainers without further action, created valid security interest in favor of law firms; perfection of security interest was achieved by law firms' continuous possession of debtor's funds, subject to the status of frauds and amounts of compensation actually allowed by court. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

Retainers paid by bankruptcy debtor to law firms pre-petition, in which law firms had security interest perfected through possession, were nullified by statute of frauds only to extent that compensation for firm was earned and expenses incurred more than 15 months after firm obtained retainer. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

18. Documents.

Where corporation's stock was physically endorsed by guarantor and voluntarily delivered to corporation as security pursuant to terms of guarantee agreement, and where corporation's receiver subsequently took possession of stock certificates as officer of court and pursuant to statutory authority, such possession was necessary to maintain corporation's security interest in stock under UCC §§ 9-304 and 9-305, and could not be considered prejudgment seizure of property. State ex rel. Hunt v. Liberty Investors Life Ins. Co., 543 P.2d 1390 (Okla. 1975).

Service of order of attachment, which was later vacated, upon garnishee in possession of stock certificates was insufficient to perfect assignee's security interest in stock and to place garnishee and assignor's creditor on notice that assignee had secured interest in shares, whereas garnishee and assignor's creditor, by possession, did properly perfect their security interests under UCC § 9-305. Friedman v. Fein, 46 A.D.2d 886 (2d Dep't 1974).

19. Chattel paper.

Where (1) debtor sold corporate stock on July 25, 1974 to defendants for $180,000, and defendants executed promissory notes under pledge agreement securing payment of stock's purchase price and delivered notes to escrowee, which also received the purchased stock, (2) debtor on March 19, 1975, with knowledge and consent of defendants and escrowee, assigned notes to creditor as collateral to secure payment of prior $60,000 debt, indorsed them to creditor's order, and delivered them to creditor which retained possession of them until August 24, 1976, a date following date on which debtor had fully debt due creditor, (3) on November 5, 1975, when defendants still owed debtor $135,000 on notes and notes were still in creditor's possession as collateral for payment of $28,000 balance then owed by debtor to creditor, debtor entered into agreement with plaintiff law firm and its client under which payments on prior debt owed by debtor to such client were extended, prospective lawsuit was settled, sums thus due to client were collateralized by assignment of debtor's interest in stock-payment notes, and notes themselves and pledge agreement securing them were also assigned to plaintiff on behalf of its client, subject to prior collateral assignment in favor of debtor's first creditor, (4) first creditor on August 24, 1976 acknowledged to escrowee that debtor had fully discharged debt due it, delivered stock-payment notes in suit to plaintiff law firm, but never indorsed notes to plaintiff's order, (5) on August 25, 1976, plaintiff, defendants (purchasers of debtor's stock), debtor, and escrowee executed written acknowledgements of debtor's assignment of notes and pledge agreement to plaintiff, and plaintiff requested that it be paid next installment on notes, which was due on October 1, 1976, (5) on April 5, 1976, IRS assessed delinquent income-tax liability against debtor and filed notice of tax lien on August 4, 1976, (6) on October 1, 1976, escrowee paid installment payment due on notes to IRS, and (7) on October 5, 1976, plaintiff after due notice declared default on notes (because of failure to receive October 1, 1976 installment payment thereon) and under acceleration clause in notes demanded full payment thereof, court held (1) that plaintiff, as nominee for its client, acquired valid collateral assignment of proceeds of notes to extent that proceeds were not required to satisfy first creditor's prior security interest therein, (2) that under UCC § 3-202(3), debtor's indorsement and negotiation of notes to first creditor merely created partial assignment of notes' proceeds and did not divest debtor of ultimate right to all proceeds not required to satisfy debt owed to first creditor, (3) that debtor's remaining interest in notes' proceeds was the interest that debtor had assigned to plaintiff as collateral on November 5, 1975, and that such assignment, under UCC § 9-204(1), gave plaintiff valid security interest in debtor's residuary interest in notes' proceeds, (4) that plaintiff's security interest in notes' proceeds was not perfected until August 24, 1976, when it became perfected under UCC § 9-305 by possession of notes following first creditor's delivery thereof to plaintiff, (5) that IRS tax lien was not superior to plaintiff's perfected security interest in notes, since neither plaintiff nor its client had received any notice of such lien until September 20, 1976, and (6) that neither plaintiff not its client could accelerate unpaid balance due on notes, since plaintiff, as nominee for its client, was merely holder of security interest in notes and was not "holder" of notes within meaning of UCC § 1-201(20) because of first creditor's failure to indorse them to plaintiff's order. Lipkowitz & Plaut v. Affrunti, 95 Misc. 2d 849 (1978).

Under UCC § 9-305, possessory security interest in ordinary chattel paper requires no filing for perfection. State Tax Comm'n v. Shor, 43 N.Y.2d 151, 371 N.E.2d 523 (1977).

§ 75-9-305. Law governing perfection and priority of security interests in investment property.

(a) Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in Section 75-8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in Section 75-8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

SOURCES: Former 1972 Code § 75-9-305 [Codes, 1942, § 41A:9-305; Laws, 1966, ch. 316, § 9-305; Laws, 1977, ch. 452, § 17; Laws, 1990, ch. 384, § 52, 1996, ch. 460, § 26; Laws, 1996, ch. 468, § 66, eff from and after July 1, 1996] is now found in comparable provisions enacted at §§ 75-9-306 and 75-9-313 by Laws, 2001, ch. 495, § 1. Present § 75-9-305 was derived from former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6, eff from and after April 1, 1978; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of security interests in investment property, see § 75-9-328.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under former § 75-9-103.

6. Perfection.
7. —Filing in debtor's principal place of business.
8. Security interest in accounts and contract rights.
9. Miscellaneous.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under former § 75-9-103.

6. Perfection.

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4). Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust &

Sav. Bank, 357 So. 2d 654 (Ala. 1978) (Also rejecting defendants' content on that Alabama UCC § 9-103(4) was inapplicable because Illinois certificate of title had not been issued when vehicle entered Alabama, since such interpretation would nullify "relation-back" features of Illinois certificate-of-title law).

Secured party who had perfected security interest on property in South Dakota, but who did not file and perfect his interest in Iowa within four-month period after goods were transported to Iowa, had junior interest to buyer for value who purchased goods within four-month period, but who had no knowledge or notice of security interest, after lapse of four months without perfection of security interest in Iowa. United States v. Squires, 378 F. Supp. 798 (S.D. Iowa 1974) (citing annotation; applying Iowa law).

Plaintiff had properly filed security agreement perfecting security interest; defendant later perfected security interest by taking possession pursuant to agreement giving defendant right to use machine at issue until completion of work; held, plaintiff was entitled to machine when purchaser filed petition for arrangement under Bankruptcy Act while machine was in defendant's possession. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970) (applying New Jersey law).

When the holder of a security interest perfects the same, subsequent purchasers and encumbrancers are charged with notice of such perfected interest. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

7. —Filing in debtor's principal place of business.

In conversion action to determine priority of security interests in bulldozer and right to proceeds from its sale, where (1) bulldozer was sold in Michigan to Michigan buyer which gave seller an Indiana address, (2) buyer at time of sale was authorized to do business in Indiana and was mainly engaged in developing Indiana property, (3) seller assigned its security agreement listing bulldozer as collateral to plaintiff, and plaintiff filed financing statement with Indiana secretary of state, (4) defendant thereafter obtained security interest in bulldozer under security agreement with buyer, who listed it as collateral for loan from defendant, and filed financing statement with Michigan secretary of state, and (5) plaintiff then filed financing statement in Michigan after defendant's filing, court held (1) that Indiana was buyer's "chief place of business" under UCC § 9-103(2), (2) that Indiana therefore was proper place to file financing statement to perfect security interest in bulldozer, and (3) that since only plaintiff had perfected its security interest in Indiana, judgment was properly entered in plaintiff's favor. Associates Fin. Servs. Co. v. First Nat'l Bank, 82 Mich. App. 495, 266 N.W.2d 490 (1978).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973) (applying Kansas law).

The mobility of tractors, normally used in more than one jurisdiction, makes filing in debtor's principal place of business necessary under UCC § 9-103(2) in order to perfect security interest therein, and bank which had not so filed could not prevail over tractor buyer's judgment creditor who levied against tractors in possession of buyer. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Where New Jersey was chief place of business of debtor which had entered into security agreement as to traxcavator, a heavy construction machine, rights of parties were governed by New Jersey law. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970).

8. Security interest in accounts and contract rights.

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

9. Miscellaneous.

Since Illinois vehicle code provided exclusive means of perfecting and giving notice of security interest in motor vehicles, failure of Illinois seller of used automobile to note bank's lien on vehicle's certificate of title resulted in failure of bank's security interest to come into existence, thereby rendering inappropriate seller's references to Illinois Uniform Commercial Code in seller's action to replevy vehicle. Huber Pontiac, Inc. v. Wells, 59 Ill. App. 3d 14, 375 N.E.2d 149 (4th Dist. 1978).

Transaction between contractor and surety for completion of public improvement project following contractor's default was not intended to have effect as security. Aetna Cas. & Sur. Co. v. Perrotta, 62 Misc. 2d 252 (1970).

The lien of a common carrier for the cost of transporting a house trailer from Virginia to Oklahoma was subordinate to a prior security interest perfected in Virginia of which the carrier was charged with notice. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

§ 75-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.

(a) Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 75-5-116.

(c) This section does not apply to a security interest that is perfected only under Section 75-9-308(d).

SOURCES: Former 1972 Code § 75-9-306 [Codes, 1942, § 41A:9-306; Laws, 1966, ch. 316, § 9-306; Laws, 1977, ch. 452, § 18; Laws, 1996, ch. 468, § 67, eff from and after July 1, 1996] is now found in comparable provisions enacted at § 75-9-315 by Laws, 2001, ch. 495, § 1. Present § 75-9-306 was derived from 1972 Code § 75-8-110 [Laws, 1996, ch. 468, § 11, eff from and after July 1, 1996] and former 1972 Code §§ 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6, eff from and after April 1, 1978; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and 75-9-305 [Codes, 1942, § 41A:9-305; Laws, 1966, ch. 316, § 9-305; Laws, 1977, ch. 452, § 17; Laws, 1990, ch. 384, § 52, 1996, ch. 460, § 26; Laws, 1996, ch. 468, § 66, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of security interests in letter-of-credit right, see § 75-9-329.

§ 75-9-307. Location of debtor.

(a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one (1) place of business is located at its place of business.

(3) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, or other comparable office; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

SOURCES: Former 1972 Code § 75-9-307 [Codes, 1942, § 41A:9-307; Laws, 1966, ch. 316, § 9-307; Laws, 1977, ch. 452, § 19; Laws, 1986, ch. 482, § 1, eff from and after December 24, 1986 (the date Section 1324 of the Food Security Act of 1985 became effective)] is now found in comparable provisions enacted at §§ 75-9-320 and 75-9-323 by Laws, 2001, ch. 495, § 1. Present § 75-9-307 was derived from former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6, eff from and after April 1, 1978; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1: Laws, 2013, ch. 451, § 5, eff from and after July 1, 2013.

SUBPART 2.

PERFECTION.

SEC.
75-9-308. When security interest or agricultural lien is perfected; continuity of perfection.
75-9-309. Security interest perfected upon attachment.
75-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.
75-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.
75-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing.
75-9-313. When possession by or delivery to secured party perfects security interest without filing.
75-9-314. Perfection by control.
75-9-315. Secured party's rights on disposition of collateral and in proceeds.
75-9-316. Effect of change in governing law.

§ 75-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) Except as otherwise provided in this section and Section 75-9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 75-9-310 through 75-9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 75-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

SOURCES: Former 1972 Code § 75-9-308 [Codes, 1942, § 41A:9-308; Laws, 1966, ch. 316, § 9-308; Laws, 1977, ch. 452, § 20, eff from and after April 1, 1978] is now found in comparable provisions enacted at § 75-9-330 by Laws, 2001, ch. 495, § 1. Present § 75-9-308 was derived from former 1972 Code §§ 75-9-115 [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996] and 75-9-303 [Codes, 1942, § 41A:9-303; Laws, 1966, ch. 316, § 9-303; Laws, 1996, ch. 468, § 64, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Continuation of perfected security interest in motor vehicle, see § 63-21-53.

Scope of Article, see § 75-9-109.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-303.

6. In general.
7. Secured debt distinguished.
8. Applicable steps.
9. Upon possession by secured party.
10. Upon attachment alone.
11. Upon attachment where filing required.
12. Upon filing.
13. Upon compliance with certificate of title laws.
14. Priority of subsequent liens.
15. Continuity.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-303.

6. In general.

Under secured note issued 6 months prior to bankruptcy covering both overdue and future accounting services, value was not given until work was actually performed, and claim for services rendered within 4 months of bankruptcy was not entitled to secured status. E.F. Corp. v. Smith, 496 F.2d 826 (10th Cir. Kan. 1974).

A creditor could not recover as a claimant in trustee process with the bank as the trustee, beyond the total of whatever amounts might be traceable as having been deposited with the bank as the proceeds of the collateral sold subject to the debtor's security interest, where the debtor had deposited the money received from sales of the collateral with other monies received from other sources. Emerson Radio of New England v. Stevens Television & Appliance Corp., 38 Mass. App. Dec. 41 (1967).

Under this section, a bank can be made subject to trustee process for monies collected subject to a perfected security interest in the proceeds, only insofar as the funds can be identified. Emerson Radio of New England v. Stevens Television & Appliance Corp., 38 Mass. App. Dec. 41 (1967).

Financing statement which identified the debtor, an individual named Henry Platt, as Platt Fur Co., an unregistered fictitious name for debtor's business, was not "seriously misleading" and did not prejudice the perfection of the creditor's claim. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

That the financing statement may be filed prior to the making of a security agreement, and that a security interest need not be in existence at the time the financing statement is filed, is clearly contemplated under the provisions of this section. In re United Thrift Stores, Inc., 242 F. Supp. 714 (D.N.J. 1965), aff'd, 363 F.2d 11 (3d Cir. N.J. 1966).

Under subsection (1) of the instant section, a security interest is perfected only when it has attached and when all the applicable steps required for perfection have been taken. In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

Under subsection (1) of the instant section, a lien is not perfected where one of the applicable steps required for perfection, such as the filing of a financing statement with the city clerk under § 9-401(1)(c), is not taken, and this is so even though the lien may, under § 9-401(2), be effective against a person having knowledge of the contents of the financing statement. In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

In an action by a trustee in bankruptcy to recover for the estate assets taken over by holders of financing contracts, wherein the contract holders, who had filed financing statements pursuant to the Uniform Commercial Code, defended on the ground that they were secured creditors, mixed questions of fact and law being involved, the matter was too complex to permit solution on motion for a summary judgment, in whole or in part. Hurwitz v. Fidelity Am. Fin. Corp., 179 F. Supp. 550 (E.D. Pa. 1960).

7. Secured debt distinguished.

This section of the Code relates to secured transactions insofar as third persons are concerned and does not determine the effect of a secured transaction as between the original debtor and the original creditor. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

8. Applicable steps.

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

As between the parties to a conditional sales contract, a valid, effective, and perfected security interest is created upon the execution of the instrument, and filing, and recordation, required as to third parties, are unnecessary as between the vendor and the vendee themselves. United States v. Lebanon Woolen Mills Corp., 241 F. Supp. 393 (D.N.H. 1964).

Since under New York Conditional Sales Act the vendor or an assignee of the vendor is protected as against any purchaser provided that the conditional sale agreement is recorded within 10 days after the making of the conditional sale, it follows that the security interest is deemed perfected during the 10-day statutory period allowed for recording, and so where the security was brought into Pennsylvania during the statutory period, the security interest must be considered as having been perfected at that time. Casterline v. GMAC, 195 Pa. Super. 344, 171 A.2d 813 (1961).

9. Upon possession by secured party.

Contention of manufacturer, who sold ten mobile homes to dealer on consignment basis, that even if inventory financer's security interest in such homes had attached under UCC § 9-303(1) while homes were in dealer's possession, such interest became unenforceable when manufacturer regained possession of homes from dealer, which contention was based on UCC § 2-326(2) which subjects consigned "sale-or-return" goods to claims of buyer's creditors while goods are in buyer's possession, could not be sustained, since UCC § 2-326(2) merely limits creditors whose claims may attach to those who have claims during period of buyer's possession and cannot be interpreted to defeat security interest that has attached during this possessory period. GECC v. Town & Country Mobile Homes, Inc., 117 Ariz. 562, 574 P.2d 50 (Ct. App. 1977).

10. Upon attachment alone.

Since television set and tape player were consumer goods, filing was not necessary to perfect purchase money security interest of conditional seller who thus had priority over security interest of pawnbroker who subsequently took possession of goods as security for loan. Kimbrell's Furn. Co. v. Friedman, 261 S.C. 172, 198 S.E.2d 803 (1973).

Where consumer goods, which in Massachusetts include automobiles, are purchased under a conditional sales contract, the security interest, under the instant section, becomes perfected when it has attached, and nothing other than the execution and delivery of the contract is required to make it attach. National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

11. Upon attachment where filing required.

In action by inventory financer to recover damages from manufacturer for conversion of ten mobile homes sold by manufacturer on consignment basis to dealer, as to which homes inventory financer claimed perfected security interest, (1) manufacturer's claim that inventory financer's lien never attached to homes, which claim was based on "after-acquired property" nature of financer's lien and financer's alleged failure to advance funds to dealer with specific reference to such homes, could not be sustained, since under UCC § 9-204(3), validity of after-acquired property clauses in security agreements was no longer open to question; (2) in present case, first two requirements of UCC § 9-204(1)-namely, that there must be agreement that security interest attach and secured party must give value-were clearly met by dealer's signing security agreement in favor of inventory financer and financer's advancing substantial funds pursuant to such agreement; (3) third requirement of UCC § 9-204(1)-namely, that debtor must acquire rights in collateral-was satisfied when dealer obtained possession of homes pursuant to consignment agreement between dealer and manufacturer; (4) under UCC § 2-326(2), dealing with goods held on sale or return, homes were subject to claims of dealer's creditors while in dealer's possession; and (5) under UCC § 9-303(1), inventory financer's security interest, which had been properly filed, became perfected when it attached to homes at time dealer obtained possession thereof. GECC v. Town & Country Mobile Homes, Inc., 117 Ariz. 562, 574 P.2d 50 (Ct. App. 1977).

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

12. Upon filing.

Letter allegedly establishing assignment of foreign exchange contract rights to bank did not measure up to security agreement under UCC since it failed to contain "description of the collateral" as required by § 9-203(1)(a). Moreover, bank failed to file financing statement, as required by §§ 9-302(1) and 9-303 and, thus, failed to obtain valid and perfected assignment of contract rights. Purported assignment was not exempt from filing under UCC § 9-302(1)(e) since, at time assignee allegedly assigned contract worth $1,000,000, assignee's total "outstanding accounts or contract rights" were $4,439,300; thus, assignment transferred just under 20 percent of assignee's accounts, including assigned contract right, which constituted "significant part" of assignee's outstanding accounts, especially in view of high absolute value of transaction at issue. Miller v. Wells Fargo Bank Int'l Corp., 406 F. Supp. 452 (S.D.N.Y. 1975), aff'd, 540 F.2d 548 (2d Cir. N.Y. 1976).

Where seller of mobile homes assigned instalment contracts thereon to bank which filed financing statement within 10 days, bank was entitled to repossess on default in making payments. Citizens Nat'l Bank v. Osetek, 353 F. Supp. 958 (S.D.N.Y. 1973).

For "perfection" purposes under Florida law secured party's lien on after-acquired goods arose at time financing statement was filed, and transfer of such goods must be deemed as having occurred on that date for purposes of bankruptcy statute's provision as to preferential transfers subject to avoidance. Owen v. McKesson & Robbins Drug Co., 349 F. Supp. 1327 (N.D. Fla. 1972), aff'd, 486 F.2d 1401 (5th Cir. Fla. 1973).

13. Upon compliance with certificate of title laws.

Since Illinois vehicle Code provided exclusive means of perfecting and giving notice of security interest in motor vehicles, failure of Illinois seller of used automobile to note bank's lien on vehicle's certificate of title resulted in failure of bank's security interest to come into existence, thereby rendering inappropriate seller's references to Illinois Uniform Commercial Code in seller's action to replevy vehicle. Huber Pontiac, Inc. v. Wells, 59 Ill. App. 3d 14, 375 N.E.2d 149 (4th Dist. 1978).

The security interest of a seller under an installment contract for the sale of a truck was perfected by a notation of the encumbrance on the certificate of title to the truck, pursuant to statute, and the perfected security interest was effective against the insolvent buyer's receivers in equity. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

14. Priority of subsequent liens.

Under UCC § 9-301, security interest of cattle seller was subordinate to rights of garnishing lien creditor where debtor purchased cattle from seller and paid for them with check which was subsequently dishonored for insufficient funds, where debtor shipped cattle to livestock auction company for resale and writ of garnishment was served on auction company, where seller and debtor subsequently executed security agreement and financing statement, back-dated, and properly describing cattle in question and where financing statement was filed within ten days after debtor purchased cattle from seller. Seller's right to reclaim under UCC § 2-702 was not security interest within purview of Article 9 on secured transactions and acceptance of check did not change cash sale into credit transaction. Since there was no security agreement between debtor and seller, either oral or written, at time writ of garnishment was served, security interest attached sometime later when security agreement was signed by debtor. Ranchers & Farmers Livestock Auction Co. v. First State Bank, 531 S.W.2d 167 (Tex. Civ. App. 1975), ref. n.r.e. (Apr. 7, 1976).

Although bank's financing statement on debtor's accounts receivable was on file with secretary of state at time subsequent creditor agreed to finance same accounts, bank would be estopped from asserting priority of its security interest where, upon being questioned, bank president stated that bank had security interest in furniture, fixtures, equipment and inventory of debtor corporation, but did not inform subsequent creditor of any security interest in accounts receivable held by bank. Manson State Bank v. Diamond, 227 N.W.2d 195 (Iowa 1975).

While, by virtue of §§ 9-303(1) and 9-204(1), a security interest in after-acquired inventory items may not be fully perfected until it attaches to items as and when they are acquired by the debtor, nevertheless § 9-204(3) recognizes that a lien in such inventors items can be created by a security agreement and such a lien, if filing requirements are complied with, is superior to a subsequently acquired contract creditor's lien or other third party claims except those of buyers in ordinary course of business under § 9-307(1) and holders of perfected purchase money security interests under § 9-312(3). Rosenberg v. Rudnick, 262 F. Supp. 635 (D. Mass. 1967).

The title of a conditional vendor to removable fixtures installed upon realty is superior to the lien of a prior mortgage containing the standard "after-acquired property" clause, but a conditional vendor is bound to refrain from wilfully impairing the security of a real estate mortgagee and if, without the consent of the mortgagee, he removes equipment subject to the mortgage, he should be required to account to the mortgagee for its fair value, and if the equipment which was replaced without the mortgagee's consent was serviceable and of some value, the priorities must appropriately be reversed to the extent of the impairment of the mortgagee's security. Blancob Constr. Corp. v. 246 Beaumont Equity, Inc., 23 A.D.2d 413 (1st Dep't 1965).

Accounts receivable which the creditor agreed in 1957 to assign to the bank as they became due from the United States government fell within the clause covering "all future accounts receivable submitted" contained in a 1955 financing statement filed by the bank, so that the interest of the bank, as the secured party, was superior to that of the receiver in bankruptcy in a 1958 proceeding, and any funds which had been placed in the hands of the bank pursuant to the assignment did not have to be turned over to the receiver. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

Where debtor and lender bank entered into a security agreement granting the bank a security interest in debtor's merchandise inventory which the bank perfected by filing, and thereafter the Commonwealth filed unemployment compensation claims against the debtor, thereby fixing liens upon all of debtor's real and personal property, and landlord levied a distraint for rent against the debtor's property, and the bank instituted an action of replevin with bond of debtor's goods subject to bank's security interest, and on same day debtor filed a petition for arrangement which was subsequently converted into bankruptcy proceeding, and bankruptcy court restrained execution of writ of replevin, the order of distribution would be (1) costs of administration, (2) wages, (3) liens of Commonwealth, (4) lien of landlord, and (5) bank's lien. In re Einhorn Bros., 272 F.2d 434 (3d Cir. Pa. 1959).

Where a bank, under its wholesale credit plan, financed the purchase of automobiles by an automobile dealer who for automobiles used as demonstrators executed installment sales contracts as both seller and buyer, and the bank subsequently accepted an assignment of such installment contracts, which in effect substituted them for the original financing arrangement, the filing of a financing statement with respect to the wholesale credit plan was ineffective to make the bank's security interest under the installment contracts a perfected interest as against the receiver in equity of the dealer. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

The security interests of the seller of equipment for a butcher business and a retail grocery store were subordinate to that of the buyers' trustee in bankruptcy where the seller did not file copies of the contracts in the office of the Secretary of the Commonwealth until after the buyers were adjudicated bankrupt, although copies were filed in the office of the prothonotary of the county wherein the buyers conducted their business. In re Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957).

15. Continuity.

Where bank had security interest in furniture dealer's after-acquired inventory, dealer acquired certain inventory from manufacturer, and manufacturer provided delivery of items in its own trucks, at its own risk, and all sales were for cash on delivery, dealer acquired rights in collateral when it was delivered and, thus, bank's security interest attached at that point under UCC § 9-204(1), was perfected upon delivery under UCC § 9-303, and took priority over statutory landlord's lien which attached at same time. National Inv. Trust v. First Nat'l Bank, 88 N.M. 514, 543 P.2d 482 (1975).

When the debtor does acquire more property of the type referred to in the financing statement already on file, and when a security interest attaches to that property, the perfection is instantaneous and automatic. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

RESEARCH REFERENCES

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 238-242, 244, 245, 247-251, 253-264, 268, 270-291, 294-310, 312-333, 335-349, 351-374, 376-386, 388-391, 396-424.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:541-9:544 (when interest perfected; continuity of perfection).

CJS. 79 C.J.S., Secured Transactions §§ 51, 52.

§ 75-9-309. Security interest perfected upon attachment.

The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in Section 75-9-311(b) with respect to consumer goods that are subject to a statute or treaty described in Section 75-9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under Section 75-2-401, 75-2-505, 75-2-711(3), or 75-2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under Section 75-4-210;

(8) A security interest of an issuer or nominated person arising under Section 75-5-118;

(9) A security interest arising in the delivery of a financial asset under Section 75-9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder;

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

SOURCES: Former 1972 Code § 75-9-309 [Codes, 1942, § 41A:9-309; Laws, 1966, ch. 316, § 9-309; Laws, 1990, ch. 384, § 53; Laws, 1996, ch. 468, § 68, eff from and after July 1, 1996] is now found in comparable provisions enacted at § 75-9-331 by Laws, 2001, ch. 495, § 1. Present § 75-9-309 was derived from former 1972 Code §§ 75-9-115 [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996], 75-9-116 [Laws, 1996, ch. 468, § 60, eff from and after July 1, 1996], and 75-9-302 [Codes, 1942, § 41A:9-302; Laws, 1966, ch. 316, § 9-302; Laws, 1977, ch. 452, § 15; Laws, 1986, ch. 401, § 1; Laws, 1990, ch. 384, § 50; Laws, 1996, ch. 468, § 62, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2002, ch. 453, § 7, eff from and after passage (approved Mar. 20, 2002.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in this section by deleting the word "and" from the end of (12) and substituting "; and" for the period at the end of (13). The Joint Committee ratified these corrections at its August 5, 2016, meeting.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Motor vehicle sales finance law, see § 63-19-1 et seq.

Security interests under motor vehicle titles law, see § 63-21-41 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-302(1).

A. In General.

6. Generally.
7. Requisites of proper filing.

B. Necessity and Effect of Filing.

8. In general.
9. Future advances or the like.
10. Guarantors and sureties.
11. Subrogees.
12. Leases.
13. Effect of filing, generally.
14. Protection of buyers in ordinary course.

C. Statutory Exceptions.

15. In general; collateral in secured party's possession.
16. Beneficial interest in trust or estate.
17. —Prior to 1977 amendment.
18. Purchase money security interest; consumer goods.
19. —Motor vehicles.
20. —Fixtures.
21. —Equipment.
22. —Farm equipment (prior to 1977 amendment).

23. Assignment of accounts.
24. —"Significant part" distinguished.
25. —Contract rights (prior to 1977 amendment).
26. —General intangibles.
27. Collecting bank.
28. Assignment for benefit of creditors, or the like.
29. Assignment of perfected interest.
30. United States laws and treaties.
31. State certificate of title laws.
32. —Collateral entrusted to merchant.
33. —Foreign state certificate of title laws.
34. Other state laws.
35. Multiple state transactions.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-302(1).

A. In General.

6. Generally.

In suit by debtor's receiver challenging bank's priority as perfected security interest holder and its concomitant right to take possession and dispose of secured collateral, UCC § 9-402 did not require bank to give notice to debtor's creditors that original security agreement was amended to increase amount of its loan and terms of repayment where increased loan was secured by same collateral originally described in financing statement. Heights v. Citizens Nat'l Bank, 463 Pa. 48, 342 A.2d 738 (1975).

This section of the Code relates to secured transactions insofar as third persons are concerned and does not determine the effect of a secured transaction as between the original debtor and the original creditor. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

Security interests based on trust receipts attached when the agreements were made, value was given, and the debtor received possession of the collateral, and the security interests were perfected when they attached. In re United Thrift Stores, Inc., 242 F. Supp. 714 (D.N.J. 1965), aff'd, 363 F.2d 11 (3d Cir. N.J. 1966).

In an action by a trustee in bankruptcy to recover for the estate assets taken over by holders of financing contracts, wherein the contract holders, who had filed financing statements pursuant to the Uniform Commercial Code, defended on the ground that they were secured creditors, mixed questions of fact and law being involved, the matter was too complex to permit solution on motion for a summary judgment, in whole or in part. Hurwitz v. Fidelity Am. Fin. Corp., 179 F. Supp. 550 (E.D. Pa. 1960).

7. Requisites of proper filing.

Where chattel mortgage on trailer was defective under UCC § 9-402(1) as filed financing statement because it lacked both address of secured party and debtor's mailing address, chattel mortgagee's security interest was unperfected under § 9-302(1), and under UCC § 9-301(1)(b), judgment lien creditor, which had obtained judgment against chattel mortgagor, executed on such judgment, and seized trailer in suit, had priority to proceeds from trailer's sale. Cushman Sales & Serv. of Neb., Inc. v. Muirhead, 201 Neb. 495, 268 N.W.2d 440 (1978).

For a case where the financing statements required by subsection (i) of the instant section were duly executed and filed, see Fall River Trust Co. v. B.G. Browdy, Inc., 346 Mass. 614, 195 N.E.2d 63 (1964).

B. Necessity and Effect of Filing.

8. In general.

Statute providing that filing of financing statement is not required to perfect security interest in assignments of accounts that do not transfer significant part of assignor's outstanding accounts did not apply to determination of whether unsecured debt assigned, for collection purposes only, to assignee holding secured debt arising from same transaction was secured after assignment; issue of perfection was pertinent as it related to security interests of either assignor or assignee, rather than to assignment from assignor to assignee. W.C. Fore Trucking Co. v. Biloxi Prestress Concrete, Inc., 98 F.3d 204 (5th Cir. 1996).

Where neither party has perfected his security interest, UCC § 9-312(5) determines priority between conflicting interests in same collateral; thus, where plaintiff-landlord had lien on tenant's property under terms of recorded lease which was valid under UCC § 9-204(3), but which was not perfected due to plaintiff's failure to file financing statement with secretary of state as required by UCC § 9-401(1)(c), and where defendant sold bar equipment to plaintiff's tenants under conditional sales contract and acquired purchase money security interest under UCC § 9-107(a), which was not perfected under UCC § 9-302(1) since defendant failed to obtain signatures of parties as required by UCC § 9-402(1), and where defendant subsequently repossessed and sold property in question, defendant's security interest took priority over plaintiff's either under theory that defendant perfected its security interest by repossessing and selling property or under theory that defendant's security interest attached prior to plaintiff's. Engelsma v. Superior Prods. Mfg. Co., 298 Minn. 77, 212 N.W.2d 884 (1973).

Failure to file financing statement under UCC § 9-302 deprives security interest of priority over federal tax lien. Sams v. Redevelopment Auth., 436 Pa. 524, 261 A.2d 566 (1970).

Generally speaking a financing statement must be filed in order to protect a security interest in property not retained by the creditor. Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535 (L. Div. 1967).

Where evidence adduced by defendant, owner of four automobiles he had delivered to a dealer, failed to establish that dealer was generally known by his creditors to be substantially engaged in selling the goods of others, Georgia had no sign law of which the owner could avail himself, and owner had neither taken nor perfected a security interest, the delivery to the dealer constituted a "sale and return," and plaintiff who had advanced money to dealer and obtained from him bills of sale and trust receipts for the automobiles obtained title sufficient to support an action for trover against defendant. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

When goods subject to a security interest are placed in the debtor's possession, the Uniform Commercial Code requires certain filings to perfect the security interest as to other creditors and third parties. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

An unrecorded security interest is not valid as against a subsequent creditor of a lessee having a judicial lien. United Rental Equip. Co. v. Potts & Callahan Contracting Co., 231 Md. 552, 191 A.2d 570 (1963).

Where debtor and lender bank entered into a security agreement granting the bank a security interest in debtor's merchandise inventory which the bank perfected by filing, and thereafter the Commonwealth filed unemployment compensation claims against the debtor, thereby fixing liens upon all of debtor's real and personal property, and landlord levied a distraint for rent against the debtor's property, and the bank instituted an action of replevin with bond of debtor's goods subject to bank's security interest, and on same day debtor filed a petition for arrangement which was subsequently converted into bankruptcy proceeding, and bankruptcy court restrained execution of writ of replevin, the order of distribution would be (1) costs of administration, (2) wages, (3) liens of Commonwealth, (4) lien of landlord, and (5) bank's lien. In re Einhorn Bros., 272 F.2d 434 (3d Cir. Pa. 1959).

9. Future advances or the like.

A properly recorded bill of sale to secure debt on an inventory, with clauses covering future advances and acquisition of substitute and additional inventors, executed and recorded prior to the adoption of the UCC, does not have to be filed anew under the UCC to preserve its security interest in inventory acquired by the debtor after the effective date of the UCC, and the trial court did not err in ordering the proceeds of the sale of such inventory paid to the holder of the bill of sale to secure debt rather than to holders of security interests, which were not purchase money interests, executed and delivered with filings made thereon after the effective date of the UCC. Charles S. Martin Distrib. Co. v. First State Bank, 114 Ga. App. 693, 152 S.E.2d 599 (1966).

10. Guarantors and sureties.

UCC does not require filing of financing statement by surety company that has executed performance bond for contractor. National Sur. Corp. v. State Nat'l Bank, 454 S.W.2d 354 (Ky. 1970).

Contractor's assignment of right to payment to its surety pursuant to indemnity agreement was account or contract right within meaning of UCC § 9-106 and was, as such, security interest subject to provisions of Article 9 of UCC; however, UCC §§ 9-301 and 9-302 provide that, with respect to such security interests in accounts and contract rights, any lien creditor, including judgment lien creditor, will have priority over secured interest unless financing statement has been filed; since no such financing statement was filed by surety with respect to assignment in question, its security interest remained subordinate to tax liens of United States. American Fid. Fire Ins. Co. v. United States, 385 F. Supp. 1075 (N.D. Cal. 1974).

Where the creditor has the protection of a security interest in collateral and the personal obligation of a guarantor, the guarantor has such interest as enables him to file a financing statement so that the creditor's interest in the collateral is perfected. Nation Wide, Inc. v. Scullin, 256 F. Supp. 929 (D.N.J. 1966), aff'd, 377 F.2d 554 (3d Cir. N.J. 1967).

The assignment in a building subcontractor's performance bond, to his surety, of all sums due and to become due to the subcontractor under his contract with the primary contractor, in the event of any abandonment, forfeiture, or breach of the subcontract by the subcontractor, was a "contract right" under § 9-301, and where not perfected under §§ 9-302 and 9-403 by appropriate recording, was invalid against a lien creditor, including a trustee in bankruptcy, from the date of the filing of the petition: hence, the surety was relegated to the status of a general creditor, with no lien on funds owing from the contractor to the bankrupt and paid into court. United States ex rel. Greer v. G.P. Fleetwood & Co., 165 F. Supp. 723 (W.D. Pa. 1958).

11. Subrogees.

Where there are two security interests in the same collateral, and a third person pays the debt of the debtor to the holder of the prior interest based upon order of filing, the third person, despite the fact that he did not take an assignment of the prior interest would, upon principles of subrogation, succeed to the rights of the holder of the prior interest provided that the interest of the intervening lienor was not prejudicially affected. This principle of subrogation is not superseded by the Uniform Commercial Code which provides in § 1-103 that unless displaced by the particular provisions of the Code, the principles of law and equity "shall supplement its provisions" because no provision of the Code purports to affect the fundamental equitable doctrine of subrogation. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

While the rights of a third person can rise no higher than those of the holder of the prior interest, the third person was not limited in the enforcement of its claim to the amount paid by the third person to the holder of the prior interest less amounts received by the third person from the debtor. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

12. Leases.

Where document evidencing transaction involving walk-in food freezer as titled "Contract of Sale and Agreement," parties termed themselves buyer and seller and expressed desire to consummate sale of freezer, monthly payments of "rent" were in reality interest on deferred purchase price, transaction was conditional sale, rather than lease, and contract created security interest in seller; and since seller never filed financing statement to perfect his security interest, perfected security interest of Small Business Administration in buyer's equipment and fixtures had priority. Witmer v. Kleppe, 469 F.2d 1245 (4th Cir. W. Va. 1972).

Owner of equipment perfected security interest in collateral by possession thereof where, pursuant to agreement between owner and lessee, option to cancel equipment lease was exercised and lessee, acting as agent of owner, dismantled equipment, removed it from building, and placed it in vans for delivery to owner. Stanley v. Fabricators, Inc., 459 P.2d 467 (Alaska 1969).

A lease of newspaper composing room equipment specifically stating it contained the entire agreement between the parties, providing that lessee acquired no interest in leased property except that of use, and giving lessor right to demand and take possession of property on termination of lease or in event of default was a bona fide lease, and lessor was not required to file a financing statement to preserve its right of possession after default. In re Atlanta Times, Inc., 259 F. Supp. 820 (N.D. Ga. 1966), aff'd, 383 F.2d 606 (5th Cir. Ga. 1967).

A lease agreement covering a machine priced at over $8,000 which provided that the lessee might, at its option, apply the monthly rental payments up to 75 percent of the machine's value against the purchase price and upon payment of the additional 25 percent of the cost in cash obtain title to the machine is an instrument requiring more than a nominal consideration to be paid for the passage of title, is not a security interest and need not be registered or filed to be valid as a lease. In re Wheatland Elec. Prods. Co., 237 F. Supp. 820 (W.D. Pa. 1964).

13. Effect of filing, generally.

Where (1) first creditor filed financing statement covering present and future inventory of motor-home retailer, (2) retailer thereafter acquired motor home from manufacturer and placed it in retailer's inventory for resale, (3) second creditor made loan to retailer and filed financing statement on such motor home without determining whether any prior financing statements were on file, (4) second creditor thereafter filed application for title certificate for home, which was issued five months later and indicated that retailer was home's owner and that second creditor was first lienholder, and (5) on retailer's default on loan, second creditor filed declaratory-decree action seeking to have its lien determined to be superior to that of first creditor, court held (1) that when first creditor filed financing statement on retailer's inventory, no title certificate or manufacturer's certificate of origin was in existence and thus first creditor could only protect its lien right by filing financing statement under Florida Uniform Commercial Code, (2) that both Florida Uniform Commercial Code, in § 9-302(3)(b), and Florida Motor Vehicle Title Certificates Act provide that lien recording provisions of Uniform Commercial Code, rather than those of Motor Vehicle Title Certificates Act, govern liens on motor vehicles held as inventory, (3) that at time of second creditor's loan to retailer, second creditor knew that no title certificate had been issued, (4) that first creditor was entitled to rely on its financing statement as notice to second creditor of first creditor's prior lien, (5) that second creditor was not buyer in ordinary course of business under UCC § 9-307(1), and (6) that since second creditor was not buyer in ordinary course of business, first creditor's security interest in motor home was superior to that of second creditor. Borg-Warner Acceptance Corp. v. Atlantic Bank, 364 So. 2d 35 (Fla. App. 1978).

In receivership proceedings involving conflicting petitions to reclaim assets of insolvent corporation, secured party which had loaned money to insolvent and had performed every act required by law to obtain perfected security interest in all of insolvent's receivables, including filing of financing statement pursuant to UCC §§ 9-302(1), 9-304(1), and 9-402(1), had priority over all unsecured general creditors, including investors in the insolvent corporation who held debentures and notes which stated on their face that they were subordinate to claims of all other contract creditors. Coastal Fin. Corp. v. Coastal Fin. Corp., 120 R.I. 317, 387 A.2d 1373 (1978).

In interpleader proceeding to establish priority of claims to money due and payable to debtor under general agency contract, UCC § 9-104 exemption from coverage of article 9 of claims for wages, salary, or other compensation of employee was inapplicable where debtor was independent contractor; creditor who had obtained perfected security interest in debtor's commissions had first priority against funds, while rights of creditor who had failed to perfect its security interest as required by UCC § 9-302 were subordinated to rights of those who qualified as lien creditors under UCC § 9-301; burden of proof as to whether lien creditors had knowledge of unperfected security interest rested on holder of unperfected security interest. Massachusetts Mut. Life Ins. Co. v. Central Penn Nat'l Bank, 372 F. Supp. 1027 (E.D. Pa. 1974), aff'd sub nom. In re Franklin Nat'l Bank, 510 F.2d 969 (3d Cir. Pa. 1975), aff'd, 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Mercantile Financial Corp., 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Miller, 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Mokrin, 510 F.2d 970 (3rd Cir. Pa. 1975).

Where petitioner's security interest was perfected by proper filing, it thereupon took priority over all unfiled and unperfected interests, including the rights of judgment creditors who thereafter issued execution, since under Rule 5202(a) CPLR such creditors are perfected only by the issuance of execution; and, upon default in payments due on the indebtedness secured by the interest, petitioner became entitled to immediate possession of the collateral under the provisions of § 9-503. William Iselin & Co. v. Burgess & Leigh Ltd., 52 Misc. 2d 821 (1967).

A chattel mortgage creates a security interest when it has been appropriately filed. In re Kelley, 54 Berks C.L.J. 106 (Pa).

14. Protection of buyers in ordinary course.

An acceptance company which had made loans to a dealer was required to look to the dealer for repayment, rather than to a new automobile in possession of one who had purchased it from the dealer in the ordinary course of business, paying the full purchase price therefor, notwithstanding that the acceptance company had filed a blanket security agreement executed by the automobile dealer, who had also executed and delivered to the acceptance company a trust receipt agreement describing the automobile in question. Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961).

Where notwithstanding that buyer who bought an automobile from the dealer out of inventory and in ordinary course of business had paid the full purchase price, the dealer thereafter fraudulently executed a collateral mortgage with the identical automobile as security in favor of a bank with whom dealer had an existing floor plan agreement, the transaction between the dealer and the bank was void as to the buyer. Weisel v. McBride, 191 Pa. Super. 411, 156 A.2d 613 (1959).

C. Statutory Exceptions.

15. In general; collateral in secured party's possession.

In replevin action brought by finance company against garage owner, trial court erred in giving priority to finance company's chattel mortgage where it was not shown that such chattel mortgage had been perfected by filing and where, on other hand, garage owner had perfected his interest in automobile since he had possession of it. Henson v. Government Emp. Fin. & Indus. Loan Corp., 257 Ark. 273, 516 S.W.2d 1 (1974).

The filing of a financing statement is unnecessary to perfect a security interest in United States coins having a numismatic value in excess of their face value, pledged with and delivered to a bank as collateral for a loan; for such coins are to be considered as "goods" rather than as a medium of exchange. In re Midas Coin Co., 264 F. Supp. 193 (E.D. Mo. 1967), aff'd, 387 F.2d 118 (8th Cir. Mo. 1968).

16. Beneficial interest in trust or estate.

Absent a filing in accordance with § 91-9-3, a trustor's assignments to the trustee of interest in real or personal property owned by the trust, were insufficient to attach a lien to the real property assets of the trust. Section 75-9-302(1)(c), which provides an exception to the filing requirement for a security interest created by an assignment of a beneficial interest in a trust, does not apply to liens on real property. Merchants Nat'l Bank v. Bank of Miss., 584 So. 2d 433 (Miss. 1991).

Although beneficial interest in land trust is personal property under Illinois law, where (1) decedent assigned beneficial interest in land trust to bank as collateral for loan, and (2) bank was trustee of such trust and had both equitable and legal title to trust res, bank had interest in real estate that was exempt from provisions of UCC Art 9, including UCC § 9-302 dealing with perfection of security interests by filing, and bank therefore was not liable for conversion of decedent's beneficial interest in such trust by proceeding in accordance with probate court's order concerning sale of trust res to satisfy claims of estate creditors, including that of bank. In re Estate of McGaughey, 60 Ill. App. 3d 150, 376 N.E.2d 259 (1st Dist. 1978).

17. —Prior to 1977 amendment.

Mortgagee failed to perfect its interest in land trust so as to entitle it to priority over mortgagors' judgment creditors, who established their claim to beneficial interest in trust by availing themselves of remedy of citation proceedings, where mortgagee delayed for over two years in filing financing statement with secretary of state as required under UCC § 9-302. Mid-West Nat'l Bank v. Metcoff, 23 Ill. App. 3d 607, 319 N.E.2d 336 (2d Dist. 1974).

18. Purchase money security interest; consumer goods.

Under Mississippi law, filing of financing statement is not required in order to perfect purchase money security interest in consumer goods. In re Shaw, 209 B.R. 393 (Bankr. N.D. Miss. 1996).

Under Mississippi law, absent filed financing statements, furniture company's claims against three Chapter 13 debtors for balance due on household goods and furnishings were only secured to extent they represented purchase money security interests. In re Shaw, 209 B.R. 393 (Bankr. N.D. Miss. 1996).

Watches and rings were "consumer goods" within the meaning of subsection (1)(d) of this section; assignment of security interest did not modify character of transaction as purchase-money transaction. In re Boykins, 120 B.R. 71 (Bankr. N.D. Miss. 1990).

UCC § 9-302(1)(d), which as an exception to the filing requirements of UCC § 9-302(1) provides that a purchase-money security interest in consumer goods is perfected without filing, is not unconstitutional (1) on the ground that it violates equal protection by not providing for a rational classification or (2) on the ground that it violates due process by not providing notice by filing. A purchase-money security interest in consumer goods is a rational classification, and the existence of the exception is sufficient to put subsequent creditors on notice. Personal Thrift Plan of Perry, Inc. v. Georgia Power Co., 242 Ga. 388, 249 S.E.2d 72 (1978).

Where debtor purchased stereo on credit and granted creditor security interest, where security agreement granted creditor security interest in "each item of merchandise purchased or hereafter purchased," but also provided that, in case of items purchased on different dates, item first purchased would be deemed paid for first, and where debtor subsequently purchased freezer under same arrangement, signing another agreement with same language, creditor had perfected the security interest in both stereo and freezer under UCC § 9-302, although creditor did not file financing statements; creditor's security interest in stereo by explicit terms of agreement was to terminate as soon as purchase price of stereo was paid and, since collateral secured only debt representing its price, security agreement created purchase money security interest in consumer goods which did not need to be filed in order to be perfected. In re Staley, 426 F. Supp. 437 (M.D. Ga. 1977).

Where debtors purchased from creditor, on credit, household appliances and goods, granting security interest to creditor, where security agreement clearly provided that, so long as any indebtedness was outstanding, property stood as collateral not only for its price but also for price of property subsequently acquired on credit, and where debtors subsequently purchased vacuum cleaner and added it to their account with creditor, signing another financing statement, creditor did not have purchase money interest in property purchased on first sale and, therefore, exception from filing requirement provided for purchase money security interest in consumer goods under UCC § 9-302 did not apply; having failed to file financing statement, creditor did not have perfected security interest and, therefore, did not have secured claim against property in bankruptcy proceeding. In re Norrell, 426 F. Supp. 435 (M.D. Ga. 1977).

Furniture dealer with security interest in household furniture and TV set purchased by bankrupt debtor could not claim perfected security interest in such goods under exception from filing requirements for consumer goods contained in UCC § 9-302(d) where security agreement covered items purchased at different times with no information as to which items were paid for and which were not; furniture dealer's interest was not "purchase money security interest" since it was not taken or retained by dealer solely to secure all or part of collateral's price. In re Manuel, 507 F.2d 990 (5th Cir. Ga. 1975).

Where defendant pawnshop purchased television sets from debtor who was not in business of selling television sets, and later resold them, defendant pawnshop was liable to secured party with purchase money security interest, despite fact that security interest was never recorded. White-Sellie's Jewelry Co. v. Goodyear Tire & Rubber Co., 477 S.W.2d 658 (Tex. Civ. App. 1972).

A guitar and amplifier primarily used by the purchaser to perform in night clubs are "equipment" and not "consumer goods," and consequently the seller's security interest must be perfected to be enforceable against a person to whom the instruments were subsequently pawned. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

A conditional sales contract is a valid security interest, analogous to a chattel mortgage, and when it is executed prior to the making of a federal tax assessment against the conditional vendee it is prior thereto and its filing is unnecessary as against the United States. United States v. Lebanon Woolen Mills Corp., 241 F. Supp. 393 (D.N.H. 1964).

"Conditional sales contract note" covering furniture, furnishings and carpeting sold to a non-profit corporation was not excluded from filing requirements. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

Since a household laundry dryer is within the definition of "consumer goods," a purchase money security interest therein may be perfected without the filing of a financing statement. United Gas Imp. Co. v. McFalls, 18 Pa. D. & C.2d 713 (1959).

19. —Motor vehicles.

A lender's attached purchase money security interest in an automobile dealership's inventory of used vehicles was not properly perfected under the Mississippi Motor Vehicle Title Law where the lender never filed a financing statement. Ford Motor Credit Co. v. State Bank & Trust Co., 571 So. 2d 937 (Miss. 1990).

Where (1) first creditor filed financing statement covering present and future inventory of motor-home retailer, (2) retailer thereafter acquired motor home from manufacturer and placed it in retailer's inventory for resale, (3) second creditor made loan to retailer and filed financing statement on such motor home without determining whether any prior financing statements were on file, (4) second creditor thereafter filed application for title certificate for home, which was issued five months later and indicated that retailer was home's owner and that second creditor was first lienholder, and (5) on retailer's default on loan, second creditor filed declaratory-decree action seeking to have its lien determined to be superior to that of first creditor, court held (1) that when first creditor filed financing statement on retailer's inventory, no title certificate or manufacturer's certificate of origin was in existence and thus first creditor could only protect its lien right by filing financing statement under Florida Uniform Commercial Code, (2) that both Florida Uniform Commercial Code, in § 9-302(3)(b), and Florida Motor Vehicle Title Certificates Act provide that lien recording provisions of Uniform Commercial Code, rather than those of Motor Vehicle Title Certificates Act, govern liens on motor vehicles held as inventory, (3) that at time of second creditor's loan to retailer, second creditor knew that no title certificate had been issued, (4) that first creditor was entitled to rely on its financing statement as notice to second creditor of first creditor's prior lien, (5) that second creditor was not buyer in ordinary course of business under UCC § 9-307(1), and (6) that since second creditor was not buyer in ordinary course of business, first creditor's security interest in motor home was superior to that of second creditor. Borg-Warner Acceptance Corp. v. Atlantic Bank, 364 So. 2d 35 (Fla. App. 1978).

Under UCC § 9-302(1)(d), a valid financing statement, properly filed, perfects a security interest in a motor vehicle. Until that time, under UCC § 9-301(1)(c), a buyer not in the ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the unperfected security interest, takes free of such interest. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

The holder of a security interest in an automobile purchased for personal, family, or household purposes need not file any statement of his security interest in order to preserve that interest against the claims of third persons. National Shawmut Bank v. Corcoran Motor Sales Co., 47 Mass. App. Dec. 72 (1971).

A mobile home is a motor vehicle within the meaning of this section which requires that a financing statement must be filed to perfect a security interest therein. Recchio v. Manufacturers & Traders Trust Co., 35 A.D.2d 769 (4th Dep't 1970).

The holder of a purchase money security interest in an automobile which qualified as "consumer goods" is not required to file a financing statement in order to assert successfully such interest against third persons. Rockland Credit Union, Inc. v. Gauthier Motors, Inc., 39 Mass. App. Dec. 180 (1967).

Under Massachusetts version of Code § 9-302(1)(d) omitting filing requirement for licensed motor vehicles, neither filing nor any step, other than execution and delivery of conditional sales contract, was necessary to make security interest attach in automobile purchased as "consumer goods". National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

Under (1)(d) of the instant section which deliberately omitted a provision of the official code draft excluding automobiles from the exception of consumer goods, filing is not required in Massachusetts to perfect a purchase money security interest in consumer goods, including automobiles, under § 9-303 the interest became perfected when it attached, and where an automobile was purchased under a conditional sale contract, nothing other than the execution and delivery of the contract was necessary to make the security interest attach. National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

A house trailer is a motor vehicle within the meaning of the Uniform Commercial Code provision requiring filing with respect to motor vehicles which are to be licensed or registered in this state, and therefore mortgagee who perfected his security interest by filing the same was entitled to possession of a trailer as opposed to the owner of a retail instalment contract whose filing had expired prior to the mortgagee's perfecting of his security interest. Albany Disct. Corp. v. Mohawk Nat'l Bank, 54 Misc. 2d 238 (1967), modified on other grounds, 30 A.D.2d 623, 290 N.Y.S.2d 576 (3d Dep't 1968), on reargument, 30 A.D.2d 919, 292 N.Y.S.2d 300 (3d Dep't 1968), aff'd, 28 N.Y.2d 222, 321 N.Y.S.2d 94, 269 N.E.2d 809 (1971).

Where the conditional buyer of an automobile warranted and covenanted on the face of the security instrument that it was bought and used primarily for personal, family or household purposes, the trial court correctly ruled that the vehicle was consumer goods to which the filing provisions of Article 9 did not apply. Natick Trust Co. v. Bay State Truck Lease, Inc., 28 Mass. App. Dec. 60 (1963).

Automobiles delivered by an automobile manufacturer to its authorized dealer, with a reservation of title until actual payment therefor, were not "consumer goods" which would relieve the manufacturer, as the holder of a security interest, from the requirement of perfecting its security interest in order to take priority over a lien creditor. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 12 Pa. D. & C.2d 351 (1957).

20. —Fixtures.

A security interest in equipment fixtures is perfected by filing a financing statement. In re Lux's Superette, Inc., 206 F. Supp. 368 (E.D. Pa. 1962).

21. —Equipment.

Although it had been orally agreed between buyer and seller that delivery of machine was not to be made except upon payment, such agreement as to delivery and payment was modified or waived by seller, and buyer became credit buyer, when manufacturer mistakenly shipped machine to buyer and seller forwarded invoice requiring payment "net in 30 days"; consequently, buyer acquired rights in machine and seller's unperfected purchase money security interest became subordinate to lender's security interest in buyer's after-acquired "equipment." Galleon Indus., Inc. v. Lewyn Mach. Co., 50 Ala. App. 334, 279 So. 2d 137 (Civ. App. 1973), cert. denied, 291 Ala. 779, 279 So. 2d 142 (1973).

An agreement between an equipment manufacturer and a finance company to the effect that the finance company was under no responsibility to record or file security paper was deemed waived by the finance company's retention of, and inaction upon, a letter from the manufacturer accompanying its transmittal of a conditional sales contract and judgment note requesting the finance company to record the paper, and the finance company's failure to comply with the statute placed the burden of loss from the dissipation of the security upon its shoulders. Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

Guitar and amplifier primarily used to perform in night clubs were "equipment" within Code § 9-109(2), and not within Code § 9-302(1)(d) consumer goods exception to Code filing requirements. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

The filing of a financing statement or a copy of the contract of sale was necessary under this section to perfect the seller's security interest in the instalment sales of equipment for a butcher business and a retail grocery store. In re Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957).

22. —Farm equipment (prior to 1977 amendment).

Pursuant to FS § 679.302(1)(c), no filing is required with respect to the sale of several separate items of farm equipment, each costing less than $2500, even though when totaled under one contract, the price of the items exceeded $2500. International Harvester Credit Corp. v. American Nat'l Bank, 296 So. 2d 32, 85 A.L.R.3d 1015 (1974), but see In re Outrigger Club, Inc., 6 B.R. 78 (Bankr. S.D. Fla. 1980); Regan v. ITT Industrial Credit Co., 469 So. 2d 1387 (Fla. Ct. App. 1984); ITT Industrial Credit Co. v. Regan, 487 So. 2d 1047 (Fla. 1986).

Haybine, designed and marketed for purpose of mowing and conditioning hay, was bought by retail business owner for commercial haycutting and baling; held, machine was, at all material times, "farm equipment" within Code exemption of filing requirement. Citizens Nat'l Bank v. Sperry Rand Corp., 456 S.W.2d 273 (Tex. Civ. App. 1970), writ ref'd n.r.e., (Oct. 7, 1970).

Farm equipment is classified as consumer goods. Lonoke Prod. Credit Ass'n v. Bohannon, 238 Ark. 206, 379 S.W.2d 17 (1964).

23. Assignment of accounts.

Defendant finance company did not acquire security interest in two vehicles superior to that of plaintiff bank, by virtue of automobile dealer's execution and filing of inventory security agreements in favor of the defendant covering vehicles, where vehicles had originally been sold by dealer and conditional sales contracts were assigned to plaintiff subject to recourse contract with dealer, where plaintiff had at all times had possession of certificates of ownership for vehicles and was listed as legal owner thereon, where dealer had possession of vehicles as result of their repossession by plaintiff pursuant to recourse agreement following purchasers' defaults, and where plaintiff had demanded, unsuccessfully, that dealer pay balance due on conditional sales contracts as provided by recourse agreement; under UCC § 9-204, dealer, as debtor, did not acquire rights in subject motor vehicles sufficient to transfer valid security interest to defendant; nor could defendant, by advancing flooring money to dealer be considered buyer in ordinary course of business, but was rather financing agency only, excluded from protection created by UCC § 9-307. Mother Lode Bank v. GMAC, 46 Cal. App. 3d 807 (3d Dist. 1975).

Assignee (from 1st assignee) of assigned claim steps into shoes of his assignor as to priorities, even if latter assignee makes no new filing. Grise v. White, 355 Mass. 698, 247 N.E.2d 385 (1969).

Factoring company, to whom an attorney assigned fees to be received from a certain client, which failed to perfect its security interest by filing a financing statement was subordinated to the rights of another lawyer who, with no knowledge of the prior assignment, became entitled to receive the fees by reason of an agreement with the assigning attorney. In re Cohen's Estate, 38 Pa. D. & C.2d 777 (1966).

A letter written by a subcontractor to his general contractor advising the latter of the assignment of his account for work performed to a bank, the written acceptance of the letter by the addressee, and the fact that the bank loaned money to the subcontractor taking the letter assignment as collateral created a valid security interest which did not have to be perfected by the filing of a financing statement. Citizens & S. Nat'l Bank v. Capital Constr. Co., 112 Ga. App. 189, 144 S.E.2d 465 (1965).

Under subsection (2) of the instant section, a security interest can be "assigned" to another creditor without loss of its priority even if no filing is made. Thus, where the order of priority under § 9-312(5)(a) among three creditors is A, B, and C, and A assigns his security interest to C, it would follow that C would acquire A's priority over B. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

Where a bank, under its wholesale credit plan, financed the purchase of automobiles by an automobile dealer who for automobiles used as demonstrators executed installment sales contracts as both seller and buyer, and the bank subsequently accepted an assignment of such installment contracts, which in effect substituted them for the original financing arrangement, the filing of a financing statement with respect to the wholesale credit plan was ineffective to make the bank's security interest under the installment contracts a perfected interest as against the receiver in equity of the dealer. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

24. —"Significant part" distinguished.

Assignee of contract rights in motion picture film was required to file financing statement under UCC § 9-302(1)(e) absent evidence that such assignment was insignificant part of outstanding accounts or rights of assignor; party claiming exemption from filing requirement under UCC §§ 9-302(1)(e) had burden of proving that assignment came within scope of statutory exemption and fact that assignment may have been isolated or casual transaction was not proper test. Consolidated Film Indus. v. United States, 547 F.2d 533 (10th Cir. Utah 1977).

Letter allegedly establishing assignment of foreign exchange contract rights to bank did not measure up to security agreement under UCC since it failed to contain "description of the collateral" as required by § 9-203(1)(a). Moreover, bank failed to file financing statement, as required by §§ 9-302(1) and 9-303 and, thus, failed to obtain valid and perfected assignment of contract rights. Purported assignment was not exempt from filing under UCC § 9-302(1)(e) since, at time assignee allegedly assigned contract worth $1,000,000, assignee's total "outstanding accounts or contract rights" were $4,439,000; thus, assignment transferred just under 20 percent of assignee's accounts, including assigned contract right, which constituted "significant part" of assignee's outstanding accounts, especially in view of high absolute value of transaction at issue. Miller v. Wells Fargo Bank Int'l Corp., 406 F. Supp. 452 (S.D.N.Y. 1975), aff'd, 540 F.2d 548 (2d Cir. N.Y. 1976).

Total of accounts receivable amounted to 16% of debtor's outstanding accounts receivable; amount of account assigned was slightly over $3,000 out of total accounts receivable of $19,000; held, assignment of accounts receivable was not significant part of debtor's outstanding accounts receivable and therefore no financing statement was required to be filed to perfect security interest therein. Standard Lumber Co. v. Chamber Frames, Inc., 317 F. Supp. 837 (E.D. Ark. 1970).

Where assignment transferred significant part of outstanding contract rights to bank, bank was required to file financing statement in order to perfect its security interest under UCC § 9-302, and, where bank failed to perfect security interest until after filing and recording of materialmen's liens, bank was not entitled to priority over liens under UCC § 9-310. Park Ave. Bank v. Bassford, 232 Ga. 216, 205 S.E.2d 861 (1974).

Casual or isolated transfer of accounts receivable, taken by one who was not regular assignee thereof but by one who was acting at assistance of accountant, was within exception to requirement of filing of financing statement, since transfer was not as to "a significant part of the outstanding accounts". Abramson v. Printer's Bindery, Inc., 440 S.W.2d 326 (Tex. Civ. App. 1969).

25. —Contract rights (prior to 1977 amendment).

To obtain priority over federal tax lien, assignment of royalty rights in showing of movie should have been perfected by filing of financing statement, unless it could be shown that at time of assignment substantial contract rights were outstanding within the meaning of (former) subd. (1)(e). Consolidated Film Indus. v. United States, 547 F.2d 533 (10th Cir. Utah 1977).

Assignments of contract rights were casual and isolated, and thus were exempt from filing requirement under UCC § 9-302(1)(e) and were perfected at time of assignment, where assignee was wholesaler of wood products and was not in business of commercial financing or obtaining assignment and where, although assignee had in past few years occasionally taken an assignment as payment for materials supplied, it did not regularly take assignments of any debtors' accounts or contract rights. Architectural Woods, Inc. v. State, 88 Wash. 2d 406, 562 P.2d 248 (1977).

Where creditor's assignment of debtor's right to receive payments of proceeds of construction contracts involved over one third of unearned portion of proceeds, and where creditor was engaged in regular business of interim financing, creditor's assignment of contract rights did not qualify for filing exemption of UCC § 9-302(1)(e); thus, where one creditor took assignment of debtor's right to receive payment of proceeds of construction contracts but did not file financing statement, and where subsequent creditor obtained security interest covering same collateral and filed financing statements pursuant to UCC § 9-302, junior but perfected security interest had priority over senior but unperfected security interest. H. & Val J. Rothschild, Inc. v. Northwestern Nat'l Bank, 309 Minn. 35, 242 N.W.2d 844, 85 A.L.R.3d 1043 (1976).

Under UCC § 9-302(1)(e) there was exemption from filing requirement for contract right and account where amount at issue did not constitute a significant part of subcontractor's receivable, where assignment was isolated event under SBA arrangement. E. Turgeon Constr. Co. v. Elhatton Plumbing & Heating Co., 110 R.I. 303, 292 A.2d 230 (1972).

The assignment in a building subcontractor's performance bond, to his surety, of all sums due and to become due to the subcontractor under his contract with the primary contractor, in the event of any abandonment, forfeiture, or breach of the subcontract by the subcontractor, was a "contract right" under § 9-301, and where not perfected under §§ 9-302 and 9-403 by appropriate recording, was invalid against a lien creditor, including a trustee in bankruptcy, from the date of the filing of the petition: hence, the surety was relegated to the status of a general creditor, with no lien on funds owing from the contractor to the bankrupt and paid into court. United States ex rel. Greer v. G.P. Fleetwood & Co., 165 F. Supp. 723 (W.D. Pa. 1958).

26. —General intangibles.

Assignment of portion of expected recovery of pending lawsuit given as security for loan and accounting services was not assignment of "account" or "contract right," but was more aptly categorized as assignment of "general intangible," which would not be perfected until filing of financing statement. Friedman, Lobe & Block v. C.L.W. Corp., 9 Wash. App. 319, 512 P.2d 769 (1973).

California has a unique exception in UCC § 9-302(1)(g) which makes it unnecessary to file a financing statement to perfect a security interest in "general intangibles"; assignee first giving notice to third party debtor in writing thereby perfects such interest; this California exception is not void because in conflict with Section 60 of the Bankruptcy Act. Nunnemaker Transp. Co. v. United Cal. Bank, 456 F.2d 28 (9th Cir. Cal. 1972).

Lien obtained through attachment execution on partnership interest, after defendant had allegedly assigned interest to his attorney as collateral for fees and costs, took priority over rights of attorney-assignee; partnership interest came within definition of "general intangible" under UCC § 9-106, security interest therein was clearly within scope of security interests governed by article 9 of code under UCC § 9-102, and, inasmuch as no financing statement was filed under UCC § 9-302, such security interest was unperfected and plaintiff's lien, obtained through attachment execution, took priority under UCC § 9-301 over rights of defendant's attorney as holder of unperfected security interest of which plaintiff had no knowledge. Med-Mar, Inc. v. Dilworth, 96 Montg. County L. Rep. 91 (Pa. 1972).

27. Collecting bank.

Bank claiming security interest in sum on deposit with bank in joint account of homeowners and Farmers Home Administration had not brought itself with exception to need for filing financing statement within UCC § 9-302(1) where bank had no setoff against either of these parties, where there was no assignment transferring the deposit, where the bank did not have "possession" of the deposit within UCC § 9-305, and where the bank had no lien priority against the deposit. Craig v. Gudim, 488 P.2d 316 (Wyo. 1971).

28. Assignment for benefit of creditors, or the like.

Where security interest was perfected by filing a financing statement, but no continuation statement was filed, effectiveness of original statement lapsed five years after initial filing and, as result, security interest became unperfected under UCC § 9-403(2), (3); however, lapse of effectiveness of financing statement, while vitiating perfection, had no effect on viability of security agreement itself; thus, where secured party took possession of collateral one day before debtor executed assignment for benefit of creditors, taking of possession by secured party constituted perfection of security interest under UCC §§ 9-302(1)(a), 9-305 and 9-503 which rendered it superior to right therein of assignee. Rosner v. Plaza Hotel Assocs., 146 N.J. Super. 447, 370 A.2d 41 (App. Div. 1977).

29. Assignment of perfected interest.

Where contractor assigned accounts receivable from defendant gas company to bank as permitted by UCC §§ 9-102(1)(a) and 9-204(3), and security interest was perfected under UCC §§ 9-302 and 9-401(1)(c), defendant was liable to bank for loss suffered by failure of defendant to honor security agreement by making checks payable to contractor rather than bank. Bank of Commerce v. Intermountain Gas Co., 96 Idaho 29, 523 P.2d 1375 (1974).

30. United States laws and treaties.

Federal Aviation Act (49 USCS §§ 1401 et seq.) preempts UCC § 9-307(1), dealing with rights of buyers in ordinary course of business, and renders properly registered security interest in airplane enforceable against buyer in ordinary course of business who subsequently purchases such plane. O'Neill v. Barnett Bank, 360 So. 2d 150 (Fla. App. 1978).

Provision in security agreement executed on purchase of new automobile which provided that until indebtedness was fully paid, "seller has and shall retain title to and a security interest in the property" did not violate federal Truth-in-Lending Act and Regulation Z, since (1) Uniform Commercial Code, in UCC § 1-201(37), now provides universal definition of term "security interest," (2) Uniform Commercial Code was designed to replace confusingly numerous security devices that prevailed under pre-Code practice, and (3) it would therefore be anomalous and counterproductive of UCC objectives to interpret Regulation Z, which requires disclosure of "type of any security interest held," as requiring lender to specify particular security device employed. In such case, it was sufficient that security agreement in issue contained reference to a "security interest" in property described in the agreement that was enforceable under the Uniform Commercial Code, and statement in the agreement that seller retained "title" to such property, although unnecessary and irrelevant in light of UCC § 9-102(1) and (2) and § 9-302(3), did not make lender's disclosure statement confusing or misleading. Drew v. Flagship First Nat'l Bank, 448 F. Supp. 434 (M.D. Fla. 1977).

Recording provisions of Federal Aviation Act preempt recording provisions of state law (UCC § 9-302) relating to recordation of security interest in aircraft, but other provisions of state law relating to validity and priority of security interest, and remedies available to holders thereof, are not preempted. Feldman v. Philadelphia Nat'l Bank, 408 F. Supp. 24 (E.D. Pa. 1976).

Creditor's security interest in accounts of joint venture attached under UCC § 9-204 but was not perfected under UCC § 9-302(1) and was subordinated to federal tax lien where only financing statement filed covered earlier loan to one joint venturer and did not give notice to potential creditors of joint venture that security interest was in existence against joint venture. United States v. Merchants & Marine Bank, 292 So. 2d 151 (Miss. 1974).

31. State certificate of title laws.

Where the certificate of title of an automobile contained a notation of the creditor's encumbrance, the notation complied with paragraph (b) of subdivision (3) of this section, although the creditor never had possession of the car. Harry Cramer, Inc. v. Morris, 37 Pa. D. & C.2d 747 (1965).

The Uniform Commercial Code does not apply to perfecting liens or encumbrances or security interest in motor vehicles in view of the fact that the legislature, under the Vehicle Code, had set up an elaborate and comprehensive system for the issuance of certificates of title for motor vehicles, for the central filing of such certificates of title and for the procedure to be followed in perfecting security interest therein. Union Nat'l Bank & Trust Co. v. Geyer Auction, Inc., 18 Pa. D. & C.2d 98 (1958).

The filing of a financing statement was not required under this section to perfect a security interest in a truck, where the encumbrance was noted on the title certificate to the truck, in accordance with a statute providing for a statement on the certificate of title of liens or encumbrances on the vehicle and making such notations adequate notice to creditors. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

32. —Collateral entrusted to merchant.

In action by lender to establish security interest in mobile homes "floor-planned" for dealer, (1) where lender pursuant to written agreement advanced money to dealer in Arizona for inventory financing, agreement gave lender security interest in all of dealer's present and after-acquired inventory, and lender filed financing statement with Arizona secretary of state; (2) where Alabama manufacturer thereafter orally sold 16 mobile homes to dealer but was not paid therefor, invoice accompanying such homes stated that title thereto could be transferred only through manufacturer's certificate of origin, and manufacturer retained all such certificates; (3) where manufacturer did not file financing statement evidencing its interest in such homes with Arizona secretary of state; and (4) where Arizona motor-vehicle registration code, at time of sale of homes to dealer, exempted them from registration requirement while they were still owned by dealer or manufacturer, plaintiff lender (1) was not required to file financing statement and certificates of title to homes with Arizona motor-vehicle division in order that lender's lien could be indorsed on such certificates and lender's security interest in dealer's inventory could be perfected; (2) lender's security interest in homes was perfected merely by filing financing statement with Arizona secretary of state pursuant to UCC § 9-302(1) and UCC § 9-401; (3) manufacturer, by retaining title to homes, merely reserved unperfected purchase-money security interest therein under UCC § 2-401; and (4) lender's perfected security interest in homes had priority over manufacturer's unperfected security interest therein under UCC § 9-301. GECC v. Tidwell Indus., Inc., 115 Ariz. 362, 565 P.2d 868 (1977).

Where automobile manufacturer, who had delivered automobiles to its authorized dealer with reservation of title until paid for, failed to file a financing statement, its unperfected security interest was subordinate to the interest of a receiver for the dealer who had the status of a lien creditor without notice of such unperfected security interest. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 12 Pa. D. & C.2d 351 (1957).

33. —Foreign state certificate of title laws.

Bank which loaned money to debtor to buy mobile home, and which failed to get its lien noted on bill of sale for such home with result that lien was not noted on any certificate of title to home until second certificate of title was issued one day before debtor filed petition in bankruptcy, did not do all that it could have done, under Kansas version of 1972 amendment to Official UCC § 9-302(3), to perfect its security interest in home, and thus trustee in bankruptcy, and not bank, was entitled to home. Lentz v. St. Mary's State Bank, 443 F. Supp. 219 (D. Kan. 1977).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973).

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4). Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust & Sav. Bank, 357 So. 2d 654 (Ala. 1978).

A bank which had filed its financing statement with the New Jersey Secretary of State had perfected its security interest in five items of self-propelled earth moving equipment, although it had not filed a financing statement with the Director of Division of Motor Vehicles, an act required by state statute as a condition precedent to the perfection of a security interest in "motor vehicles" (a term defined in the statute to include self-propelled earth moving equipment), the court holding that despite the statutory definition, the term "motor vehicle" was not intended to embrace machines which normally operate at construction sites even though literally they perhaps can be used to transport persons on a highway. In re Ferro Contracting Co., 380 F.2d 116 (3d Cir. N.J. 1967), cert. denied, 389 U.S. 974, 88 S. Ct. 475, 19 L. Ed. 2d 466 (1967).

By virtue of the provisions of subsec. (3), the filing provisions of Article 9 have no application to motor vehicles in the State of Georgia required to be registered under the Motor Vehicles Certificate Title Act. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

34. Other state laws.

Statute which merely provided means to enable holder of lien on liquor license to receive notice from State Division of Beverage in event action was taken that might affect license's continued existence, and which did not necessarily give such notice to entire world, was not substitute central filing system within meaning of Florida UCC § 9-302(3)(b), so as to enable bank's security interest in debtor's liquor license to be deemed to have been perfected at date debtor's petition for bankruptcy was filed and thus to be superior to interest in license of trustee in bankruptcy. In re Coed Shop, Inc., 435 F. Supp. 472 (N.D. Fla. 1977), aff'd, 567 F.2d 1367 (5th Cir. Fla. 1978).

California's unique exception in UCC § 9-302(1)(g) which makes it unnecessary to file a financing statement to perfect a security interest in "general intangibles" includes assignment of rights in certain collect freight revenues payable to debtor, and this exception is not void based on policy expressed in section of Bankruptcy Act pertaining to preferential transfers of property. Nunnemaker Transp. Co. v. United Cal. Bank, 456 F.2d 28 (9th Cir. Cal. 1972).

When a loan is refinanced the original financing statement may stand if the collateral is the same, as the original statement does not identify the debt in any way, and this conclusion is not affected by the existence of another local statute which provides for the release of any recorded lien or evidence of obligation when payment is made thereof. Under the Code, there is neither a necessity of filing a new financing statement because of the creation of a new refinancing loan nor any obligation to terminate the original financing statement. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

Code § 9-302(3)(b) could not exempt auto dealer from Code filing requirements, since state statute requiring central filing of security interest applied only to those not automobile dealers or manufacturers. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

35. Multiple state transactions.

Where creditor obtained notes secured by chattel mortgages for money advanced to grow, harvest, and sell tobacco crops in two counties, but failed chattel mortgages only in one county clerk's office, creditor failed to perfect its security interest in tobacco crop in county in which there was no filing. United Tobacco Whse. Co. v. Wells, 490 S.W.2d 152 (Ky. 1973).

RESEARCH REFERENCES

ALR. Registration of mortgages or other liens on personal property in case of residents of other states. 10 A.L.R.2d 764.

Determination of purchase price of farm equipment for purposes of UCC § 9-302(1)(c) excusing filing of financing statement. 85 A.L.R.3d 1037.

When is filing financing statement necessary to perfect an assignment of accounts under UCC § 9-302(1)(c). 85 A.L.R.3d 1050.

Creation and Perfection of Security Interests in Insurance Proceeds under Article 9 of Uniform Commercial Code. 47 A.L.R.6th 347.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 249-251, 253-264, 268, 270-291, 294-310, 312-333, 335-349, 351-361.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:152 (proper filing as perfecting security interest between parties).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:511, 9:512, 9:521-9:525 (perfection of security interests; filing; when required, exceptions).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:617, 9:619 (filing; place; erroneous filing).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:631 (filing; formal requisites of financing statement).

CJS. 6A C.J.S., Assignments § 78.

79 C.J.S., Secured Transactions §§ 50 et seq.

72 C.J.S., Pledges § 13.

Law Reviews. Dunn, Construction Contract Claims and Litigation — Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 75-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) Except as otherwise provided in subsection (b) and Section 75-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under Section 75-9-308(d), (e), (f), or (g);

(2) That is perfected under Section 75-9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in Section 75-9-311(a);

(4) In goods in possession of a bailee which is perfected under Section 75-9-312(d)(1) or (2);

(5) In certificated securities, documents, goods or instruments which is perfected without filing, control or possession under Section 75-9-312(e), (f), or (g);

(6) In collateral in the secured party's possession under Section 75-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under Section 75-9-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 75-9-314;

(9) In proceeds which is perfected under Section 75-9-315; or

(10) That is perfected under Section 75-9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

SOURCES: Former 1972 Code § 75-9-310 [Codes, 1942, § 41A:9-310; Laws, 1966, ch. 316, § 9-310] is now found in comparable provisions enacted at § 75-9-333 by Laws, 2001, ch. 495, § 1. Present § 75-9-310 was derived from former 1972 Code § 75-9-302 [Codes, 1942, § 41A:9-302; Laws, 1966, ch. 316, § 9-302; Laws, 1977, ch. 452, § 15; Laws, 1986, ch. 401, § 1; Laws, 1990, ch. 384, § 50; Laws, 1996, ch. 468, § 62, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 64, eff from and after July 1, 2006.

Cross References — Perfection without filing, see § 75-9-313.

Perfection by control, see § 75-9-314.

Priorities among conflicting security interests in and agricultural liens on same collateral, see § 75-9-322.

Contents of financing statement, see § 75-9-502.

Persons entitled to file a record, see § 75-9-509.

What constitutes filing, see § 75-9-516.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-302(1).

6. In general; collateral in secured party's possession.
7. Beneficial interest in trust or estate.
8. —Prior to 1977 amendment.
9. Purchase money security interest; consumer goods.
10. —Motor vehicles.
11. —Fixtures.
12. —Equipment.
13. —Farm equipment (prior to 1977 amendment).
14. Assignment of accounts.
15. —"Significant part" distinguished.
16. —Contract rights (prior to 1977 amendment).
17. —General intangibles.
18. Collecting bank.
19. Assignment for benefit of creditors, or the like.
20. Assignment of perfected interest.
21. United States laws and treaties.
22. State certificate of title laws.
23. —Collateral entrusted to merchant.
24. —Foreign state certificate of title laws.
25. Other state laws.
26. Multiple state transactions.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-302(1).

6. In general; collateral in secured party's possession.

In replevin action brought by finance company against garage owner, trial court erred in giving priority to finance company's chattel mortgage where it was not shown that such chattel mortgage had been perfected by filing and where, on other hand, garage owner had perfected his interest in automobile since he had possession of it. Henson v. Government Emp. Fin. & Indus. Loan Corp., 257 Ark. 273, 516 S.W.2d 1 (1974).

The filing of a financing statement is unnecessary to perfect a security interest in United States coins having a numismatic value in excess of their face value, pledged with and delivered to a bank as collateral for a loan; for such coins are to be considered as "goods" rather than as a medium of exchange. In re Midas Coin Co., 264 F. Supp. 193 (E.D. Mo. 1967), aff'd, 387 F.2d 118 (8th Cir. Mo. 1968).

7. Beneficial interest in trust or estate.

Absent a filing in accordance with § 91-9-3, a trustor's assignments to the trustee of interest in real or personal property owned by the trust, were insufficient to attach a lien to the real property assets of the trust. Section 75-9-302(1)(c), which provides an exception to the filing requirement for a security interest created by an assignment of a beneficial interest in a trust, does not apply to liens on real property. Merchants Nat'l Bank v. Bank of Miss., 584 So. 2d 433 (Miss. 1991).

Although beneficial interest in land trust is personal property under Illinois law, where (1) decedent assigned beneficial interest in land trust to bank as collateral for loan, and (2) bank was trustee of such trust and had both equitable and legal title to trust res, bank had interest in real estate that was exempt from provisions of UCC Art 9, including UCC § 9-302 dealing with perfection of security interests by filing, and bank therefore was not liable for conversion of decedent's beneficial interest in such trust by proceeding in accordance with probate court's order concerning sale of trust res to satisfy claims of estate creditors, including that of bank. In re Estate of McGaughey, 60 Ill. App. 3d 150, 376 N.E.2d 259 (1st Dist. 1978).

8. —Prior to 1977 amendment.

Mortgagee failed to perfect its interest in land trust so as to entitle it to priority over mortgagors' judgment creditors, who established their claim to beneficial interest in trust by availing themselves of remedy of citation proceedings, where mortgagee delayed for over two years in filing financing statement with secretary of state as required under UCC § 9-302. Mid-West Nat'l Bank v. Metcoff, 23 Ill.

App. 3d 607, 319 N.E.2d 336 (2d Dist. 1974).

9. Purchase money security interest; consumer goods.

Where a lender claimed a primary lien encumbering a mobile home, the purported owner of the mobile home could not use as a defense the fact that the UCC-1 Financing Statement was filed in the wrong county because, pursuant to former Miss. Code Ann. § 75-9-302, the filing of a UCC-1 Financing Statement was not necessary. Bank of Am. v. Wren (In re Robinson), — Bankr. —, 2008 Bankr. LEXIS 2367 (Bankr. N.D. Miss. Aug. 26, 2008).

Under Mississippi law, filing of financing statement is not required in order to perfect purchase money security interest in consumer goods. In re Shaw, 209 B.R. 393 (Bankr. N.D. Miss. 1996).

Under Mississippi law, absent filed financing statements, furniture company's claims against three Chapter 13 debtors for balance due on household goods and furnishings were only secured to extent they represented purchase money security interests. In re Shaw, 209 B.R. 393 (Bankr. N.D. Miss. 1996).

Watches and rings were "consumer goods" within the meaning of subsection (1)(d) of this section; assignment of security interest did not modify character of transaction as purchase-money transaction. In re Boykins, 120 B.R. 71 (Bankr. N.D. Miss. 1990).

UCC § 9-302(1)(d), which as an exception to the filing requirements of UCC § 9-302(1) provides that a purchase-money security interest in consumer goods is perfected without filing, is not unconstitutional (1) on the ground that it violates equal protection by not providing for a rational classification or (2) on the ground that it violates due process by not providing notice by filing. A purchase-money security interest in consumer goods is a rational classification, and the existence of the exception is sufficient to put subsequent creditors on notice. Personal Thrift Plan of Perry, Inc. v. Georgia Power Co., 242 Ga. 388, 249 S.E.2d 72 (1978).

Where debtor purchased stereo on credit and granted creditor security interest, where security agreement granted creditor security interest in "each item of merchandise purchased or hereafter purchased," but also provided that, in case of items purchased on different dates, item first purchased would be deemed paid for first, and where debtor subsequently purchased freezer under same arrangement, signing another agreement with same language, creditor had perfected the security interest in both stereo and freezer under UCC § 9-302, although creditor did not file financing statements; creditor's security interest in stereo by explicit terms of agreement was to terminate as soon as purchase price of stereo was paid and, since collateral secured only debt representing its price, security agreement created purchase money security interest in consumer goods which did not need to be filed in order to be perfected. In re Staley, 426 F. Supp. 437 (M.D. Ga. 1977).

Where debtors purchased from creditor, on credit, household appliances and goods, granting security interest to creditor, where security agreement clearly provided that, so long as any indebtedness was outstanding, property stood as collateral not only for its price but also for price of property subsequently acquired on credit, and where debtors subsequently purchased vacuum cleaner and added it to their account with creditor, signing another financing statement, creditor did not have purchase money interest in property purchased on first sale and, therefore, exception from filing requirement provided for purchase money security interest in consumer goods under UCC § 9-302 did not apply; having failed to file financing statement, creditor did not have perfected security interest and, therefore, did not have secured claim against property in bankruptcy proceeding. In re Norrell, 426 F. Supp. 435 (M.D. Ga. 1977).

Furniture dealer with security interest in household furniture and TV set purchased by bankrupt debtor could not claim perfected security interest in such goods under exception from filing requirements for consumer goods contained in UCC § 9-302(d) where security agreement covered items purchased at different times with no information as to which items were paid for and which were not; furniture dealer's interest was not "purchase money security interest" since it was not taken or retained by dealer solely to secure all or part of collateral's price. In re Manuel, 507 F.2d 990 (5th Cir. Ga. 1975).

Where defendant pawnshop purchased television sets from debtor who was not in business of selling television sets, and later resold them, defendant pawnshop was liable to secured party with purchase money security interest, despite fact that security interest was never recorded. White-Sellie's Jewelry Co. v. Goodyear Tire & Rubber Co., 477 S.W.2d 658 (Tex. Civ. App. 1972).

A guitar and amplifier primarily used by the purchaser to perform in night clubs are "equipment" and not "consumer goods," and consequently the seller's security interest must be perfected to be enforceable against a person to whom the instruments were subsequently pawned. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

A conditional sales contract is a valid security interest, analogous to a chattel mortgage, and when it is executed prior to the making of a federal tax assessment against the conditional vendee it is prior thereto and its filing is unnecessary as against the United States. United States v. Lebanon Woolen Mills Corp., 241 F. Supp. 393 (D.N.H. 1964).

"Conditional sales contract note" covering furniture, furnishings and carpeting sold to a non-profit corporation was not excluded from filing requirements. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

Since a household laundry dryer is within the definition of "consumer goods," a purchase money security interest therein may be perfected without the filing of a financing statement. United Gas Imp. Co. v. McFalls, 18 Pa. D. & C.2d 713 (1959).

10. —Motor vehicles.

A lender's attached purchase money security interest in an automobile dealership's inventory of used vehicles was not properly perfected under the Mississippi Motor Vehicle Title Law where the lender never filed a financing statement. Ford Motor Credit Co. v. State Bank & Trust Co., 571 So. 2d 937 (Miss. 1990).

Where (1) first creditor filed financing statement covering present and future inventory of motor-home retailer, (2) retailer thereafter acquired motor home from manufacturer and placed it in retailer's inventory for resale, (3) second creditor made loan to retailer and filed financing statement on such motor home without determining whether any prior financing statements were on file, (4) second creditor thereafter filed application for title certificate for home, which was issued five months later and indicated that retailer was home's owner and that second creditor was first lienholder, and (5) on retailer's default on loan, second creditor filed declaratory-decree action seeking to have its lien determined to be superior to that of first creditor, court held (1) that when first creditor filed financing statement on retailer's inventory, no title certificate or manufacturer's certificate of origin was in existence and thus first creditor could only protect its lien right by filing financing statement under Florida Uniform Commercial Code, (2) that both Florida Uniform Commercial Code, in § 9-302(3)(b), and Florida Motor Vehicle Title Certificates Act provide that lien recording provisions of Uniform Commercial Code, rather than those of Motor Vehicle Title Certificates Act, govern liens on motor vehicles held as inventory, (3) that at time of second creditor's loan to retailer, second creditor knew that no title certificate had been issued, (4) that first creditor was entitled to rely on its financing statement as notice to second creditor of first creditor's prior lien, (5) that second creditor was not buyer in ordinary course of business under UCC § 9-307(1), and (6) that since second creditor was not buyer in ordinary course of business, first creditor's security interest in motor home was superior to that of second creditor. Borg-Warner Acceptance Corp. v. Atlantic Bank, 364 So. 2d 35 (Fla. App. 1978).

Under UCC § 9-302(1)(d), a valid financing statement, properly filed, perfects a security interest in a motor vehicle. Until that time, under UCC § 9-301(1)(c), a buyer not in the ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the unperfected security interest, takes free of such interest. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

A mobile home is a motor vehicle within the meaning of this section which requires that a financing statement must be filed to perfect a security interest therein. Recchio v. Manufacturers & Traders Trust Co., 35 A.D.2d 769 (4th Dep't 1970).

The holder of a security interest in an automobile purchased for personal, family, or household purposes need not file any statement of his security interest in order to preserve that interest against the claims of third persons. National Shawmut Bank v. Corcoran Motor Sales Co., 47 Mass. App. Dec. 72 (1971).

Under Massachusetts version of Code § 9-302(1)(d) omitting filing requirement for licensed motor vehicles, neither filing nor any step, other than execution and delivery of conditional sales contract, was necessary to make security interest attach in automobile purchased as "consumer goods". National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

Under (1)(d) of the instant section which deliberately omitted a provision of the official code draft excluding automobiles from the exception of consumer goods, filing is not required in Massachusetts to perfect a purchase money security interest in consumer goods, including automobiles, under § 9-303 the interest became perfected when it attached, and where an automobile was purchased under a conditional sale contract, nothing other than the execution and delivery of the contract was necessary to make the security interest attach. National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

A house trailer is a motor vehicle within the meaning of the Uniform Commercial Code provision requiring filing with respect to motor vehicles which are to be licensed or registered in this state, and therefore mortgagee who perfected his security interest by filing the same was entitled to possession of a trailer as opposed to the owner of a retail instalment contract whose filing had expired prior to the mortgagee's perfecting of his security interest. Albany Disct. Corp. v. Mohawk Nat'l Bank, 54 Misc. 2d 238 (1967), modified on other grounds, 30 A.D.2d 623, 290 N.Y.S.2d 576 (3d Dep't 1968), on reargument, 30 A.D.2d 919, 292 N.Y.S.2d 300 (3d Dep't 1968), aff'd, 28 N.Y.2d 222, 321 N.Y.S.2d 94, 269 N.E.2d 809 (1971).

The holder of a purchase money security interest in an automobile which qualified as "consumer goods" is not required to file a financing statement in order to assert successfully such interest against third persons. Rockland Credit Union, Inc. v. Gauthier Motors, Inc., 39 Mass. App. Dec. 180 (1967).

Where the conditional buyer of an automobile warranted and covenanted on the face of the security instrument that it was bought and used primarily for personal, family or household purposes, the trial court correctly ruled that the vehicle was consumer goods to which the filing provisions of Article 9 did not apply. Natick Trust Co. v. Bay State Truck Lease, Inc., 28 Mass. App. Dec. 60 (1963).

Automobiles delivered by an automobile manufacturer to its authorized dealer, with a reservation of title until actual payment therefor, were not "consumer goods" which would relieve the manufacturer, as the holder of a security interest, from the requirement of perfecting its security interest in order to take priority over a lien creditor. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 12 Pa. D. & C.2d 351 (1957).

11. —Fixtures.

A security interest in equipment fixtures is perfected by filing a financing statement. In re Lux's Superette, Inc., 206 F. Supp. 368 (E.D. Pa. 1962).

12. —Equipment.

Although it had been orally agreed between buyer and seller that delivery of machine was not to be made except upon payment, such agreement as to delivery and payment was modified or waived by seller, and buyer became credit buyer, when manufacturer mistakenly shipped machine to buyer and seller forwarded invoice requiring payment "net in 30 days"; consequently, buyer acquired rights in machine and seller's unperfected purchase money security interest became subordinate to lender's security interest in buyer's after-acquired "equipment."

Galleon Indus., Inc. v. Lewyn Mach. Co., 50 Ala. App. 334, 279 So. 2d 137 (Civ. App. 1973), cert. denied, 291 Ala. 779, 279 So. 2d 142 (1973).

An agreement between an equipment manufacturer and a finance company to the effect that the finance company was under no responsibility to record or file security paper was deemed waived by the finance company's retention of, and inaction upon, a letter from the manufacturer accompanying its transmittal of a conditional sales contract and judgment note requesting the finance company to record the paper, and the finance company's failure to comply with the statute placed the burden of loss from the dissipation of the security upon its shoulders. Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

The filing of a financing statement or a copy of the contract of sale was necessary under this section to perfect the seller's security interest in the instalment sales of equipment for a butcher business and a retail grocery store. In re Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957).

Guitar and amplifier primarily used to perform in night clubs were "equipment" within Code § 9-109(2), and not within Code § 9-302(1)(d) consumer goods exception to Code filing requirements. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

13. —Farm equipment (prior to 1977 amendment).

Pursuant to FS § 679.302(1)(c), no filing is required with respect to the sale of several separate items of farm equipment, each costing less than $2500, even though when totaled under one contract, the price of the items exceeded $2500. International Harvester Credit Corp. v. American Nat'l Bank, 296 So. 2d 32, 85 A.L.R.3d 1015 (1974), but see In re Outrigger Club, Inc., 6 B.R. 78 (Bankr. S.D. Fla. 1980); Regan v. ITT Industrial Credit Co., 469 So. 2d 1387 (Fla. Ct. App. 1984); ITT Industrial Credit Co. v. Regan, 487 So. 2d 1047 (Fla. 1986).

Haybine, designed and marketed for purpose of mowing and conditioning hay, was bought by retail business owner for commercial haycutting and baling; held, machine was, at all material times, "farm equipment" within Code exemption of filing requirement. Citizens Nat'l Bank v. Sperry Rand Corp., 456 S.W.2d 273 (Tex. Civ. App. 1970), writ ref'd n.r.e., (Oct. 7, 1970).

Farm equipment is classified as consumer goods. Lonoke Prod. Credit Ass'n v. Bohannon, 238 Ark. 206, 379 S.W.2d 17 (1964).

14. Assignment of accounts.

Defendant finance company did not acquire security interest in two vehicles superior to that of plaintiff bank, by virtue of automobile dealer's execution and filing of inventory security agreements in favor of the defendant covering vehicles, where vehicles had originally been sold by dealer and conditional sales contracts were assigned to plaintiff subject to recourse contract with dealer, where plaintiff had at all times had possession of certificates of ownership for vehicles and was listed as legal owner thereon, where dealer had possession of vehicles as result of their repossession by plaintiff pursuant to recourse agreement following purchasers' defaults, and where plaintiff had demanded, unsuccessfully, that dealer pay balance due on conditional sales contracts as provided by recourse agreement; under UCC § 9-204, dealer, as debtor, did not acquire rights in subject motor vehicles sufficient to transfer valid security interest to defendant; nor could defendant, by advancing flooring money to dealer be considered buyer in ordinary course of business, but was rather financing agency only, excluded from protection created by UCC § 9-307. Mother Lode Bank v. GMAC, 46 Cal. App. 3d 807 (3d Dist. 1975).

Assignee (from 1st assignee) of assigned claim steps into shoes of his assignor as to priorities, even if latter assignee makes no new filing. Grise v. White, 355 Mass. 698, 247 N.E.2d 385 (1969).

Factoring company, to whom an attorney assigned fees to be received from a certain client, which failed to perfect its security interest by filing a financing statement was subordinated to the rights of another lawyer who, with no knowledge of the prior assignment, became entitled to receive the fees by reason of an agreement with the assigning attorney. In re

Cohen's Estate, 38 Pa. D. & C.2d 777 (1966).

A letter written by a subcontractor to his general contractor advising the latter of the assignment of his account for work performed to a bank, the written acceptance of the letter by the addressee, and the fact that the bank loaned money to the subcontractor taking the letter assignment as collateral created a valid security interest which did not have to be perfected by the filing of a financing statement. Citizens & S. Nat'l Bank v. Capital Constr. Co., 112 Ga. App. 189, 144 S.E.2d 465 (1965).

Under subsection (2) of the instant section, a security interest can be "assigned" to another creditor without loss of its priority even if no filing is made. Thus, where the order of priority under § 9-312(5)(a) among three creditors is A, B, and C, and A assigns his security interest to C, it would follow that C would acquire A's priority over B. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

Where a bank, under its wholesale credit plan, financed the purchase of automobiles by an automobile dealer who for automobiles used as demonstrators executed installment sales contracts as both seller and buyer, and the bank subsequently accepted an assignment of such installment contracts, which in effect substituted them for the original financing arrangement, the filing of a financing statement with respect to the wholesale credit plan was ineffective to make the bank's security interest under the installment contracts a perfected interest as against the receiver in equity of the dealer. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

15. —"Significant part" distinguished. Insurer was not exempt from the filing requirement provisions of the UCC under Miss. Code Ann. § 75-9-302 as the loan that the insurer made to a contractor represented more than one quarter of the contractor's total outstanding accounts receivable. St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank, 882 So. 2d 766 (Miss. 2004).

Assignee of contract rights in motion picture film was required to file financing statement under UCC § 9-302(1)(e) absent evidence that such assignment was insignificant part of outstanding accounts or rights of assignor; party claiming exemption from filing requirement under UCC §§ 9-302(1)(e) had burden of proving that assignment came within scope of statutory exemption and fact that assignment may have been isolated or casual transaction was not proper test. Consolidated Film Indus. v. United States, 547 F.2d 533 (10th Cir. Utah 1977).

Letter allegedly establishing assignment of foreign exchange contract rights to bank did not measure up to security agreement under UCC since it failed to contain "description of the collateral" as required by § 9-203(1)(a). Moreover, bank failed to file financing statement, as required by §§ 9-302(1) and 9-303 and, thus, failed to obtain valid and perfected assignment of contract rights. Purported assignment was not exempt from filing under UCC § 9-302(1)(e) since, at time assignee allegedly assigned contract worth $1,000,000, assignee's total "outstanding accounts or contract rights" were $4,439,000; thus, assignment transferred just under 20 percent of assignee's accounts, including assigned contract right, which constituted "significant part" of assignee's outstanding accounts, especially in view of high absolute value of transaction at issue. Miller v. Wells Fargo Bank Int'l Corp., 406 F. Supp. 452 (S.D.N.Y. 1975), aff'd, 540 F.2d 548 (2d Cir. N.Y. 1976).

Where assignment transferred significant part of outstanding contract rights to bank, bank was required to file financing statement in order to perfect its security interest under UCC § 9-302, and, where bank failed to perfect security interest until after filing and recording of materialmen's liens, bank was not entitled to priority over liens under UCC § 9-310. Park Ave. Bank v. Bassford, 232 Ga. 216, 205 S.E.2d 861 (1974).

Total of accounts receivable amounted to 16% of debtor's outstanding accounts receivable; amount of account assigned was slightly over $3,000 out of total accounts receivable of $19,000; held, assignment of accounts receivable was not significant part of debtor's outstanding accounts receivable and therefore no financing statement was required to be filed to perfect security interest therein. Standard Lumber Co. v. Chamber Frames, Inc., 317 F. Supp. 837 (E.D. Ark. 1970).

Casual or isolated transfer of accounts receivable, taken by one who was not regular assignee thereof but by one who was acting at assistance of accountant, was within exception to requirement of filing of financing statement, since transfer was not as to "a significant part of the outstanding accounts". Abramson v. Printer's Bindery, Inc., 440 S.W.2d 326 (Tex. Civ. App. 1969).

16. —Contract rights (prior to 1977 amendment).

To obtain priority over federal tax lien, assignment of royalty rights in showing of movie should have been perfected by filing of financing statement, unless it could be shown that at time of assignment substantial contract rights were outstanding within the meaning of (former) subd. (1)(e). Consolidated Film Indus. v. United States, 547 F.2d 533 (10th Cir. Utah 1977).

Assignments of contract rights were casual and isolated, and thus were exempt from filing requirement under UCC § 9-302(1)(e) and were perfected at time of assignment, where assignee was wholesaler of wood products and was not in business of commercial financing or obtaining assignment and where, although assignee had in past few years occasionally taken an assignment as payment for materials supplied, it did not regularly take assignments of any debtors' accounts or contract rights. Architectural Woods, Inc. v. State, 88 Wash. 2d 406, 562 P.2d 248 (1977).

Where creditor's assignment of debtor's right to receive payments of proceeds of construction contracts involved over one third of unearned portion of proceeds, and where creditor was engaged in regular business of interim financing, creditor's assignment of contract rights did not qualify for filing exemption of UCC § 9-302(1)(e); thus, where one creditor took assignment of debtor's right to receive payment of proceeds of construction contracts but did not file financing statement, and where subsequent creditor obtained security interest covering same collateral and filed financing statements pursuant to UCC § 9-302, junior but perfected security interest had priority over senior but unperfected security interest. H. & Val J. Rothschild, Inc. v. Northwestern Nat'l Bank, 309 Minn. 35, 242 N.W.2d 844, 85 A.L.R.3d 1043 (1976).

Under UCC § 9-302(1)(e) there was exemption from filing requirement for contract right and account where amount at issue did not constitute a significant part of subcontractor's receivable, where assignment was isolated event under SBA arrangement. E. Turgeon Constr. Co. v. Elhatton Plumbing & Heating Co., 110 R.I. 303, 292 A.2d 230 (1972).

The assignment in a building subcontractor's performance bond, to his surety, of all sums due and to become due to the subcontractor under his contract with the primary contractor, in the event of any abandonment, forfeiture, or breach of the subcontract by the subcontractor, was a "contract right" under § 9-301, and where not perfected under §§ 9-302 and 9-403 by appropriate recording, was invalid against a lien creditor, including a trustee in bankruptcy, from the date of the filing of the petition: hence, the surety was relegated to the status of a general creditor, with no lien on funds owing from the contractor to the bankrupt and paid into court. United States ex rel. Greer v. G.P. Fleetwood & Co., 165 F. Supp. 723 (W.D. Pa. 1958).

17. —General intangibles.

Assignment of portion of expected recovery of pending lawsuit given as security for loan and accounting services was not assignment of "account" or "contract right," but was more aptly categorized as assignment of "general intangible," which would not be perfected until filing of financing statement. Friedman, Lobe & Block v. C.L.W. Corp., 9 Wash. App. 319, 512 P.2d 769 (1973).

California has a unique exception in UCC § 9-302(1)(g) which makes it unnecessary to file a financing statement to perfect a security interest in "general intangibles"; assignee first giving notice to third party debtor in writing thereby perfects such interest; this California exception is not void because in conflict with Section 60 of the Bankruptcy Act. Nunnemaker Transp. Co. v. United Cal. Bank, 456 F.2d 28 (9th Cir. Cal. 1972).

Lien obtained through attachment execution on partnership interest, after defendant had allegedly assigned interest to his attorney as collateral for fees and costs, took priority over rights of attorney-assignee; partnership interest came within definition of "general intangible" under UCC § 9-106, security interest therein was clearly within scope of security interests governed by article 9 of code under UCC § 9-102, and, inasmuch as no financing statement was filed under UCC § 9-302, such security interest was unperfected and plaintiff's lien, obtained through attachment execution, took priority under UCC § 9-301 over rights of defendant's attorney as holder of unperfected security interest of which plaintiff had no knowledge. Med-Mar, Inc. v. Dilworth, 96 Montg. County L. Rep. 91 (Pa. 1972).

18. Collecting bank.

Bank claiming security interest in sum on deposit with bank in joint account of homeowners and Farmers Home Administration had not brought itself with exception to need for filing financing statement within UCC § 9-302(1) where bank had no setoff against either of these parties, where there was no assignment transferring the deposit, where the bank did not have "possession" of the deposit within UCC § 9-305, and where the bank had no lien priority against the deposit. Craig v. Gudim, 488 P.2d 316 (Wyo. 1971).

19. Assignment for benefit of creditors, or the like.

Where security interest was perfected by filing a financing statement, but no continuation statement was filed, effectiveness of original statement lapsed five years after initial filing and, as result, security interest became unperfected under UCC § 9-403(2), (3); however, lapse of effectiveness of financing statement, while vitiating perfection, had no effect on viability of security agreement itself; thus, where secured party took possession of collateral one day before debtor executed assignment for benefit of creditors, taking of possession by secured party constituted perfection of security interest under UCC §§ 9-302(1)(a), 9-305 and 9-503 which rendered it superior to right therein of assignee. Rosner v. Plaza Hotel Assocs., 146 N.J. Super. 447, 370 A.2d 41 (App. Div. 1977).

20. Assignment of perfected interest.

Where contractor assigned accounts receivable from defendant gas company to bank as permitted by UCC §§ 9-102(1)(a) and 9-204(3), and security interest was perfected under UCC §§ 9-302 and 9-401(1)(c), defendant was liable to bank for loss suffered by failure of defendant to honor security agreement by making checks payable to contractor rather than bank. Bank of Commerce v. Intermountain Gas Co., 96 Idaho 29, 523 P.2d 1375 (1974).

21. United States laws and treaties.

Federal Aviation Act (49 USCS §§ 1401 et seq.) preempts UCC § 9-307(1), dealing with rights of buyers in ordinary course of business, and renders properly registered security interest in airplane enforceable against buyer in ordinary course of business who subsequently purchases such plane. O'Neill v. Barnett Bank, 360 So. 2d 150 (Fla. App. 1978).

Provision in security agreement executed on purchase of new automobile which provided that until indebtedness was fully paid, "seller has and shall retain title to and a security interest in the property" did not violate federal Truth-in-Lending Act and Regulation Z, since (1) Uniform Commercial Code, in UCC § 1-201(37), now provides universal definition of term "security interest," (2) Uniform Commercial Code was designed to replace confusingly numerous security devices that prevailed under pre-Code practice, and (3) it would therefore be anomalous and counterproductive of UCC objectives to interpret Regulation Z, which requires disclosure of "type of any security interest held," as requiring lender to specify particular security device employed. In such case, it was sufficient that security agreement in issue contained reference to a "security interest" in property described in the agreement that was enforceable under the Uniform Commercial Code, and statement in the agreement that seller retained "title" to such property, although unnecessary and irrelevant in light of UCC § 9-102(1) and (2) and § 9-302(3), did not make lender's disclosure statement confusing or misleading. Drew v. Flagship First Nat'l Bank, 448 F. Supp. 434 (M.D. Fla. 1977).

Recording provisions of Federal Aviation Act preempt recording provisions of state law (UCC § 9-302) relating to recordation of security interest in aircraft, but other provisions of state law relating to validity and priority of security interest, and remedies available to holders thereof, are not preempted. Feldman v. Philadelphia Nat'l Bank, 408 F. Supp. 24 (E.D. Pa. 1976).

Creditor's security interest in accounts of joint venture attached under UCC § 9-204 but was not perfected under UCC § 9-302(1) and was subordinated to federal tax lien where only financing statement filed covered earlier loan to one joint venturer and did not give notice to potential creditors of joint venture that security interest was in existence against joint venture. United States v. Merchants & Marine Bank, 292 So. 2d 151 (Miss. 1974).

22. State certificate of title laws.

Where the certificate of title of an automobile contained a notation of the creditor's encumbrance, the notation complied with paragraph (b) of subdivision (3) of this section, although the creditor never had possession of the car. Harry Cramer, Inc. v. Morris, 37 Pa. D. & C.2d 747 (1965).

The Uniform Commercial Code does not apply to perfecting liens or encumbrances or security interest in motor vehicles in view of the fact that the legislature, under the Vehicle Code, had set up an elaborate and comprehensive system for the issuance of certificates of title for motor vehicles, for the central filing of such certificates of title and for the procedure to be followed in perfecting security interest therein. Union Nat'l Bank & Trust Co. v. Geyer Auction, Inc., 18 Pa. D. & C.2d 98 (1958).

The filing of a financing statement was not required under this section to perfect a security interest in a truck, where the encumbrance was noted on the title certificate to the truck, in accordance with a statute providing for a statement on the certificate of title of liens or encumbrances on the vehicle and making such notations adequate notice to creditors. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

23. —Collateral entrusted to merchant.

In action by lender to establish security interest in mobile homes "floor-planned" for dealer, (1) where lender pursuant to written agreement advanced money to dealer in Arizona for inventory financing, agreement gave lender security interest in all of dealer's present and after-acquired inventory, and lender filed financing statement with Arizona secretary of state; (2) where Alabama manufacturer thereafter orally sold 16 mobile homes to dealer but was not paid therefor, invoice accompanying such homes stated that title thereto could be transferred only through manufacturer's certificate of origin, and manufacturer retained all such certificates; (3) where manufacturer did not file financing statement evidencing its interest in such homes with Arizona secretary of state; and (4) where Arizona motor-vehicle registration code, at time of sale of homes to dealer, exempted them from registration requirement while they were still owned by dealer or manufacturer, plaintiff lender (1) was not required to file financing statement and certificates of title to homes with Arizona motor-vehicle division in order that lender's lien could be indorsed on such certificates and lender's security interest in dealer's inventory could be perfected; (2) lender's security interest in homes was perfected merely by filing financing statement with Arizona secretary of state pursuant to UCC § 9-302(1) and UCC § 9-401; (3) manufacturer, by retaining title to homes, merely reserved unperfected purchase-money security interest therein under UCC § 2-401; and (4) lender's perfected security interest in homes had priority over manufacturer's unperfected security interest therein under UCC § 9-301. GECC v. Tidwell Indus., Inc., 115 Ariz. 362, 565 P.2d 868 (1977).

Where automobile manufacturer, who had delivered automobiles to its authorized dealer with reservation of title until paid for, failed to file a financing statement, its unperfected security interest was subordinate to the interest of a receiver for the dealer who had the status of a lien creditor without notice of such unperfected security interest. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 12 Pa. D. & C.2d 351 (1957).

24. —Foreign state certificate of title laws.

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4). Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust & Sav. Bank, 357 So. 2d 654 (Ala. 1978).

Bank which loaned money to debtor to buy mobile home, and which failed to get its lien noted on bill of sale for such home with result that lien was not noted on any certificate of title to home until second certificate of title was issued one day before debtor filed petition in bankruptcy, did not do all that it could have done, under Kansas version of 1972 amendment to Official UCC § 9-302(3), to perfect its security interest in home, and thus trustee in bankruptcy, and not bank, was entitled to home. Lentz v. St. Mary's State Bank, 443 F. Supp. 219 (D. Kan. 1977).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973).

By virtue of the provisions of subsec. (3), the filing provisions of Article 9 have no application to motor vehicles in the State of Georgia required to be registered under the Motor Vehicles Certificate Title Act. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

A bank which had filed its financing statement with the New Jersey Secretary of State had perfected its security interest in five items of self-propelled earth moving equipment, although it had not filed a financing statement with the Director of Division of Motor Vehicles, an act required by state statute as a condition precedent to the perfection of a security interest in "motor vehicles" (a term defined in the statute to include self-propelled earth moving equipment), the court holding that despite the statutory definition, the term "motor vehicle" was not intended to embrace machines which normally operate at construction sites even though literally they perhaps can be used to transport persons on a highway. In re Ferro Contracting Co., 380 F.2d 116 (3d Cir. N.J. 1967), cert. denied, 389 U.S. 974, 88 S. Ct. 475, 19 L. Ed. 2d 466 (1967).

25. Other state laws.

Statute which merely provided means to enable holder of lien on liquor license to receive notice from State Division of Beverage in event action was taken that might affect license's continued existence, and which did not necessarily give such notice to entire world, was not substitute central filing system within meaning of Florida UCC § 9-302(3)(b), so as to enable bank's security interest in debtor's liquor license to be deemed to have been perfected at date debtor's petition for bankruptcy was filed and thus to be superior to interest in license of trustee in bankruptcy. In re Coed Shop, Inc., 435 F. Supp. 472 (N.D. Fla. 1977), aff'd, 567 F.2d 1367 (5th Cir. Fla. 1978).

California's unique exception in UCC § 9-302(1)(g) which makes it unnecessary to file a financing statement to perfect a security interest in "general intangibles" includes assignment of rights in certain collect freight revenues payable to debtor, and this exception is not void based on policy expressed in section of Bankruptcy Act pertaining to preferential transfers of property. Nunnemaker Transp. Co. v. United Cal. Bank, 456 F.2d 28 (9th Cir. Cal. 1972).

When a loan is refinanced the original financing statement may stand if the collateral is the same, as the original statement does not identify the debt in any way, and this conclusion is not affected by the existence of another local statute which provides for the release of any recorded lien or evidence of obligation when payment is made thereof. Under the Code, there is neither a necessity of filing a new financing statement because of the creation of a new refinancing loan nor any obligation to terminate the original financing statement. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

Code § 9-302(3)(b) could not exempt auto dealer from Code filing requirements, since state statute requiring central filing of security interest applied only to those not automobile dealers or manufacturers. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

26. Multiple state transactions.

Where creditor obtained notes secured by chattel mortgages for money advanced to grow, harvest, and sell tobacco crops in two counties, but failed chattel mortgages only in one county clerk's office, creditor failed to perfect its security interest in tobacco crop in county in which there was no filing. United Tobacco Whse. Co. v. Wells, 490 S.W.2d 152 (Ky. 1973).

ATTORNEY GENERAL OPINIONS

The filing of financing statements required by subsection (a) of this section does not apply to the state's lien on farmers' cotton for boll weevil assessments. Tagert, Mar. 28, 2003, A.G. Op. #03-0132.

§ 75-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 75-9-310(a);

(2) Sections 63-21-1 through 63-21-77 (the Mississippi Motor Vehicle and Manufactured Housing Title Law) or a certificate of title issued pursuant to Sections 59-25-1 through 59-25-17 (Certificates of Title for Boats and Other Vessels); or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and Sections 75-9-313 and 75-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and Section 75-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral subject to a statute specified in subsection (a) (2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

SOURCES: Former 1972 Code § 75-9-311 [Codes, 1942, § 41A:9-311; Laws, 1966, ch. 316, § 9-311, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-401 by Laws, 2001, ch. 495, § 1. Present § 75-9-311 was derived from former 1972 Code § 75-9-302 [Codes, 1942, § 41A:9-302; Laws, 1966, ch. 316, § 9-302; Laws, 1977, ch. 452, § 15; Laws, 1986, ch. 401, § 1; Laws, 1990, ch. 384, § 50; Laws, 1996, ch. 468, § 62, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 6, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (a)(3) by inserting the word "a" preceding "certificate of title." The Joint Legislative Committee ratified the correction at its August 1, 2013, meeting.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-302(3), (4).

6. United States laws and treaties.
7. State certificate of title laws.
8. —Collateral entrusted to merchant.
9. —Foreign state certificate of title laws.
10. Other state laws.
11. Multiple state transactions.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-302(3), (4).

6. United States laws and treaties.

Federal Aviation Act (49 USCS §§ 1401 et seq.) preempts UCC § 9-307(1), dealing with rights of buyers in ordinary course of business, and renders properly registered security interest in airplane enforceable against buyer in ordinary course of business who subsequently purchases such plane. O'Neill v. Barnett Bank, 360 So. 2d 150 (Fla. App. 1978).

Provision in security agreement executed on purchase of new automobile which provided that until indebtedness was fully paid, "seller has and shall retain title to and a security interest in the property" did not violate federal Truth-in-Lending Act and Regulation Z, since (1) Uniform Commercial Code, in UCC § 1-201(37), now provides universal definition of term "security interest," (2) Uniform Commercial Code was designed to replace confusingly numerous security devices that prevailed under pre-Code practice, and (3) it would therefore be anomalous and counterproductive of UCC objectives to interpret Regulation Z, which requires disclosure of "type of any security interest held," as requiring lender to specify particular security device employed. In such case, it was sufficient that security agreement in issue contained reference to a "security interest" in property described in the agreement that was enforceable under the Uniform Commercial Code, and statement in the agreement that seller retained "title" to such property, although unnecessary and irrelevant in light of UCC § 9-102(1) and (2) and § 9-302(3), did not make lender's disclosure statement confusing or misleading. Drew v. Flagship First Nat'l Bank, 448 F. Supp. 434 (M.D. Fla. 1977).

Recording provisions of Federal Aviation Act preempt recording provisions of state law (UCC § 9-302) relating to recordation of security interest in aircraft, but other provisions of state law relating to validity and priority of security interest, and remedies available to holders thereof, are not preempted. Feldman v. Philadelphia Nat'l Bank, 408 F. Supp. 24 (E.D. Pa. 1976).

Creditor's security interest in accounts of joint venture attached under UCC § 9-204 but was not perfected under UCC § 9-302(1) and was subordinated to federal tax lien where only financing statement filed covered earlier loan to one joint venturer and did not give notice to potential creditors of joint venture that security interest was in existence against joint venture. United States v. Merchants & Marine Bank, 292 So. 2d 151 (Miss. 1974).

7. State certificate of title laws.

Where the certificate of title of an automobile contained a notation of the creditor's encumbrance, the notation complied with paragraph (b) of subdivision (3) of this section, although the creditor never had possession of the car. Harry Cramer, Inc. v. Morris, 37 Pa. D. & C.2d 747 (1965).

The Uniform Commercial Code does not apply to perfecting liens or encumbrances or security interest in motor vehicles in view of the fact that the legislature, under the Vehicle Code, had set up an elaborate and comprehensive system for the issuance of certificates of title for motor vehicles, for the central filing of such certificates of title and for the procedure to be followed in perfecting security interest therein. Union Nat'l Bank & Trust Co. v. Geyer Auction, Inc., 18 Pa. D. & C.2d 98 (1958).

The filing of a financing statement was not required under this section to perfect a security interest in a truck, where the encumbrance was noted on the title certificate to the truck, in accordance with a statute providing for a statement on the certificate of title of liens or encumbrances on the vehicle and making such notations adequate notice to creditors. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

8. —Collateral entrusted to merchant.

In action by lender to establish security interest in mobile homes "floor-planned" for dealer, (1) where lender pursuant to written agreement advanced money to dealer in Arizona for inventory financing, agreement gave lender security interest in all of dealer's present and after-acquired inventory, and lender filed financing statement with Arizona secretary of state; (2) where Alabama manufacturer thereafter orally sold 16 mobile homes to dealer but was not paid therefor, invoice accompanying such homes stated that title thereto could be transferred only through manufacturer's certificate of origin, and manufacturer retained all such certificates; (3) where manufacturer did not file financing statement evidencing its interest in such homes with Arizona secretary of state; and (4) where Arizona motor-vehicle registration code, at time of sale of homes to dealer, exempted them from registration requirement while they were still owned by dealer or manufacturer, plaintiff lender (1) was not required to file financing statement and certificates of title to homes with Arizona motor-vehicle division in order that lender's lien could be indorsed on such certificates and lender's security interest in dealer's inventory could be perfected; (2) lender's security interest in homes was perfected merely by filing financing statement with Arizona secretary of state pursuant to UCC § 9-302(1) and UCC § 9-401; (3) manufacturer, by retaining title to homes, merely reserved unperfected purchase-money security interest therein under UCC § 2-401; and (4) lender's perfected security interest in homes had priority over manufacturer's unperfected security interest therein under UCC § 9-301. GECC v. Tidwell Indus., Inc., 115 Ariz. 362, 565 P.2d 868 (1977).

Where automobile manufacturer, who had delivered automobiles to its authorized dealer with reservation of title until paid for, failed to file a financing statement, its unperfected security interest was subordinate to the interest of a receiver for the dealer who had the status of a lien creditor without notice of such unperfected security interest. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 12 Pa. D. & C.2d 351 (1957).

9. —Foreign state certificate of title laws.

Bank which loaned money to debtor to buy mobile home, and which failed to get its lien noted on bill of sale for such home with result that lien was not noted on any certificate of title to home until second certificate of title was issued one day before debtor filed petition in bankruptcy, did not do all that it could have done, under Kansas version of 1972 amendment to Official UCC § 9-302(3), to perfect its security interest in home, and thus trustee in bankruptcy, and not bank, was entitled to home. Lentz v. St. Mary's State Bank, 443 F. Supp. 219 (D. Kan. 1977).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973).

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4).

Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust & Sav. Bank, 357 So. 2d 654 (Ala. 1978).

A bank which had filed its financing statement with the New Jersey Secretary of State had perfected its security interest in five items of self-propelled earth moving equipment, although it had not filed a financing statement with the Director of Division of Motor Vehicles, an act required by state statute as a condition precedent to the perfection of a security interest in "motor vehicles" (a term defined in the statute to include self-propelled earth moving equipment), the court holding that despite the statutory definition, the term "motor vehicle" was not intended to embrace machines which normally operate at construction sites even though literally they perhaps can be used to transport persons on a highway. In re Ferro Contracting Co., 380 F.2d 116 (3d Cir. N.J. 1967), cert. denied, 389 U.S. 974, 88 S. Ct. 475, 19 L. Ed. 2d 466 (1967).

By virtue of the provisions of subsec. (3), the filing provisions of Article 9 have no application to motor vehicles in the State of Georgia required to be registered under the Motor Vehicles Certificate Title Act. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

10. Other state laws.

Statute which merely provided means to enable holder of lien on liquor license to receive notice from State Division of Beverage in event action was taken that might affect license's continued existence, and which did not necessarily give such notice to entire world, was not substitute central filing system within meaning of Florida UCC § 9-302(3)(b), so as to enable bank's security interest in debtor's liquor license to be deemed to have been perfected at date debtor's petition for bankruptcy was filed and thus to be superior to interest in license of trustee in bankruptcy. In re Coed Shop, Inc., 435 F. Supp. 472 (N.D. Fla. 1977), aff'd, 567 F.2d 1367 (5th Cir. Fla. 1978).

California's unique exception in UCC § 9-302(1)(g) which makes it unnecessary to file a financing statement to perfect a security interest in "general intangibles" includes assignment of rights in certain collect freight revenues payable to debtor, and this exception is not void based on policy expressed in section of Bankruptcy Act pertaining to preferential transfers of property. Nunnemaker Transp. Co. v. United Cal. Bank, 456 F.2d 28 (9th Cir. Cal. 1972).

When a loan is refinanced the original financing statement may stand if the collateral is the same, as the original statement does not identify the debt in any way, and this conclusion is not affected by the existence of another local statute which provides for the release of any recorded lien or evidence of obligation when payment is made thereof. Under the Code, there is neither a necessity of filing a new financing statement because of the creation of a new refinancing loan nor any obligation to terminate the original financing statement. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

Code § 9-302(3)(b) could not exempt auto dealer from Code filing requirements, since state statute requiring central filing of security interest applied only to those not automobile dealers or manufacturers. Guardian Disct. Co. v. Settles, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

11. Multiple state transactions.

Where creditor obtained notes secured by chattel mortgages for money advanced to grow, harvest, and sell tobacco crops in two counties, but failed chattel mortgages only in one county clerk's office, creditor failed to perfect its security interest in tobacco crop in county in which there was no filing. United Tobacco Whse. Co. v. Wells, 490 S.W.2d 152 (Ky. 1973).

§ 75-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing.

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in Section 75-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under Section 75-9-314;

(2) And except as otherwise provided in Section 75-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 75-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under Section 75-9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

SOURCES: Former 1972 Code § 75-9-312 [Codes, 1942, § 41A:9-312; Laws, 1966, ch. 316, § 9-312; Laws, 1977, ch. 452, § 21; Laws, 1986, ch. 343, § 2; Laws, 1990, ch. 384, § 54; Laws, 1996, ch. 468, § 69, eff from and after July 1, 1996] is now found in comparable provisions enacted at §§ 75-9-322 through 75-9-324 by Laws, 2001, ch. 495, § 1. Present § 75-9-312 was derived from former 1972 Code §§ 75-9-115 [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996] and 75-9-304 [Codes, 1942, § 41A:9-304; Laws, 1966, ch. 316, § 9-304; Laws, 1977, ch. 452, § 16; Laws, 1990, ch. 384, § 51; Laws, 1996, ch. 460, § 25; Laws, 1996, ch. 468, § 65, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 65, eff from and after July 1, 2006.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Negotiable instruments, see § 75-3-101 et seq.

Documents of title, see § 75-7-101 et seq.

Investment securities, see § 75-8-101 et seq.

Perfection without filing, see § 75-9-313.

Perfection by control, see § 75-9-314.

Contents of financing statement, see § 75-9-502.

Persons entitled to file a record, see § 75-9-509.

What constitutes filing, see § 75-9-516.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-304.

A. Decisions Under Uniform Commercial Code.

6. In general.
7. Perfection by possession.
8. Perfection by filing.
9. Perfection by notification.
10. Effect of failure to perfect security interest.
11. Priorities.

B. Decisions Under Former Statutes.

12. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-304.

A. Decisions Under Uniform Commercial Code.

6. In general.

This section of the Code relates to secured transactions insofar as third persons are concerned and does not determine the effect of a secured transaction as between the original debtor and the original creditor. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

7. Perfection by possession.

Where (1) first bank, which had loaned debtor $20,000 and accepted as collateral nonnegotiable certificate of deposit that first bank had previously issued to debtor, inadvertently delivered renewal certificate to debtor, (2) debtor, instead of returning renewal certificate to first bank, used it as collateral for loan from second bank and gave second bank security interest in renewal certificate that second bank perfected by possession under UCC § 9-304(1), and (3) on debtor's default on both loans, second bank presented renewal certificate to first bank, which dishonored it, court held (1) that second bank was not holder in due course under UCC §§ 3-302(1) and 3-805 because renewal certificate was nonnegotiable under UCC § 3-104(1)(d), (2) that as a result, second bank was mere assignee of renewal certificate and certificate under assignments statute was subject to first bank's right of setoff, (3) that exclusion of right of setoff from Article 9 protection means that claimant of right of setoff (first bank) against collateral (renewal certificate) is not barred from enforcing such right merely because another creditor (second bank) has perfected security interest in collateral by taking possession thereof, since right of setoff is separate from priority provisions of Article 9, and (4) that as a result, second bank held debtor's renewal certificate subject to any defenses of first bank, which "defenses" included first bank's right of setoff. Bank of Crystal Springs v. First Nat'l Bank, 427 So. 2d 968 (Miss. 1983).

Where two certificates of deposit were indorsed in blank by owners and delivered to bank to enable third party to obtain line of credit from bank; where in connection with delivery of certificates, owners thereof also simultaneously executed two instruments entitled "Consent to Pledge" and "Security Agreement-Pledge" which specifically described collateral (the two certificates of deposit) for proposed extension of credit by bank; and where bank in reliance on such instruments and delivery of the collateral advanced desired line of credit to third party, effect of transaction under UCC § 9-304(1) and § 9-305 was to create and perfect valid security interest in certificates in favor of bank which was enforceable under UCC § 9-203(1). Montavon v. Alamo Nat'l Bank, 554 S.W.2d 787 (Tex. Civ. App. 1977).

Subcontractor's delivery of certificate of deposit to attorney, as alleged escrow agent, was not delivery to general contractor and thus general contractor did not perfect security interest in certificate prior to four months statutory period preceding subcontractor's bankruptcy where, inter alia, during time that certificate was in possession of attorney, interest was paid to subcontractor rather than general contractor, and where, although attorney was attorney to whom general contractor normally referred its legal matters, attorney also did some legal work for subcontractor. Stein v. Rand Constr. Co., 400 F. Supp. 944 (S.D.N.Y. 1975).

Where corporation's stock was physically endorsed by guarantor and voluntarily delivered to corporation as security pursuant to terms of guarantee agreement, and where corporation's receiver subsequently took possession of stock certificates as officer of court and pursuant to statutory authority, such possession was necessary to maintain corporation's security interest in stock under UCC §§ 9-304 and 9-305, and could not be considered prejudgment seizure of property. State ex rel. Hunt v. Liberty Investors Life Ins. Co., 543 P.2d 1390 (Okla. 1975).

Since non-negotiable certificate of deposit was "instrument" under UCC § 9-105(1)(g), only way security interest in certificate could be perfected was by possession under specific provisions of UCC § 9-304(1) and, thus, where secured party perfected security interest in certificate of deposit by taking possession, no subsequent claim by bank could impair that interest, and bank was not entitled to offset against certificate its claims against original owner of certificate arising out of original owner's previous indebtedness to bank. First Nat'l Bank v. Lone Star Life Ins. Co., 524 S.W.2d 525 (Tex. Civ. App. 1975), writ ref'd n.r.e., 19 Tex. Sup. Ct. J. 17, 529 S.W.2d 67 (1975).

Notwithstanding UCC § 9-304(1), which provides that security interest in instruments (checks and money) can only be perfected by taking possession, under UCC § 9-306 properly perfected security interest in collateral continued in proceeds of that collateral, including collections, money and checks being considered cash proceeds, and secured party's interest in cash proceeds continued into bank accounts in which debtor deposited collections in violation of security agreement, subject, however, to bank's rights as holder in due course. Commercial Disct. Corp. v. Milwaukee W. Bank, 61 Wis. 2d 671, 214 N.W.2d 33 (1974).

8. Perfection by filing.

Where debtor, as security for loan, assigned collateral notes secured by trust deeds to creditor, assignments were recorded in county where land was situated, but instruments were never delivered to creditors, remaining in physical possession of debtor at all times, and creditors did not file any type of security agreement or financing statement, interests claimed by creditors in collateral notes were never perfected under UCC § 9-304(1) and therefore were subordinated to rights of trustee in bankruptcy pursuant to UCC § 9-301. Although debtor was acting as some sort of collection agent for creditors by collecting payments on collateral notes and then paying over these funds owing on their own promissory notes to creditors, debtor acting as collection agent for creditors was not type of agent who could take possession of instruments for purposes of perfection under UCC §§ 9-304(1) and 9-305. Huffman v. Wikle, 550 F.2d 1228 (9th Cir. Cal. 1977).

Where manufacturing company, which had been making gun cabinets for another company under contract providing that such other company would furnish basic materials for cabinets, that it reserved title to such materials, and that it would buy assembled cabinets from manufacturer at reduced price, became insolvent and ceased operations after obtaining Small Business Administration loan from two banks that required manufacturer to execute security agreement in their favor in manufacturer's present and after-acquired inventory, and where such banks, after perfecting their security interests in such inventory by filing financial statements that were proper in form, content, and place of filing, attempted to enforce such security interests by taking possession of manufacturer's inventory, as against asserted interest therein of company supplying materials to manufacturer, (1) interest of supplier of materials was purchase-money security interest under UCC § 9-107(b); (2) such interest was not perfected under UCC § 9-304 by filing of financing statement concerning such materials and giving notice of claim thereto; and (3) under UCC § 9-312(3), such unperfected interest had no priority over perfected security interests of banks in such materials (which were part of manufacturer's inventory), where security interests of banks had properly attached under UCC § 9-204(1). Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

Where supplier sold truck body kits to debtor, but debtor failed to pay for kits, where bank loaned money to debtor and filed financing statement which listed body kits as collateral, but no separate written security agreement was entered into between bank and debtor, and where body kits were subsequently sold back to supplier and consigned to debtor under agreement giving supplier security interest in kits and supplier filed financing statement covering body kits: (1) bank's financing statement was not effective as security agreement, as required by UCC § 9-203(1)(b), since it did not contain language which specifically created or granted security interest in described collateral; (2) bank did not perfect its security interest in collateral by taking "possession" pursuant to UCC § 9-305, prior to time supplier filed its financing statement with secretary of state, although bank's employees were present on debtor's premises during morning of day during which supplier filed, since bank did not begin loading collateral into its truck until sometime after supplier filed; (3) fact that bank filed and then took possession of collateral did not give bank priority under "first to file" rule of UCC § 9-302(5)(a) since its interest had not attached under UCC § 9-204 prior to time bank took possession and bank could not combine elements of perfecting under filing method with elements under possession method to defeat rule of UCC § 9-305 that there can be no relation back of perfection date when perfection is obtained through possession. Transport Equip. Co. v. Guaranty State Bank, 518 F.2d 377 (10th Cir. Kan. 1975).

An agreement between an equipment manufacturer and a finance company to the effect that the finance company was under no responsibility to record or file security paper was deemed waived by the finance company's retention of, and inaction upon, a letter from the manufacturer accompanying its transmittal of a conditional sales contract and judgment note requesting the finance company to record the paper, and the finance company's failure to comply with the statute placed the burden of loss from the dissipation of the security upon its shoulders. Congress Fin. Corp. v. Sterling-Coin Op Mach. Corp., 456 F.2d 451 (3d Cir. Pa. 1972).

Since television set and tape player were consumer goods, filing was not necessary to perfect purchase money security interest of conditional seller who thus had priority over security interest of pawnbroker who subsequently took possession of goods as security for loan. Kimbrell's Furn. Co. v. Friedman, 261 S.C. 172, 198 S.E.2d 803 (1973).

9. Perfection by notification.

Letter by which owner of paintings and sculptures notified owner of art gallery, who had possession of paintings and sculptures pursuant to consignment agreement and who was thus bailee of paintings and sculptures, that owner had assigned proceeds from sale of paintings and sculptures to secured party, that such proceeds were to be paid to secured party's attorney, and that pre-existing consignment was to be irrevocable unless written release was given by secured party, adequately served to notify owner of gallery of secured party's rights in collateral and thus to perfect secured party's security interest in paintings and sculptures; this interest, perfected as it was before owner of paintings and sculptures filed petition in bankruptcy, took priority over trustee's interest in such objects. Looney v. Nuss, 545 F.2d 916 (5th Cir. Tex. 1977), reh'g denied, 548 F.2d 355 (5th Cir. Tex. 1977), cert. denied, 430 U.S. 987, 97 S. Ct. 1687, 52 L. Ed. 2d 382 (1977).

10. Effect of failure to perfect security interest.

Buyer's drafts, which described purchased beans by kind and quantity, vested title to beans in buyer under UCC § 7-504, where drafts were documents of title and represented sale of beans of type in which seller had title. Bank, which took possession of seller's assets as secured creditor for purpose of liquidating seller's business, gained no right to these beans by means of its security interest in the inventory of seller, where the beans represented by the warehouse receipt found in seller's safe were in possession of a third party and bank failed to perfect security interest as required by UCC § 9-304 in warehouse receipt. Midland Bean Co. v. Farmers State Bank, 37 Colo. App. 452, 552 P.2d 317 (1976).

11. Priorities.

In receivership proceedings involving conflicting petitions to reclaim assets of insolvent corporation, secured party which had loaned money to insolvent and had performed every act required by law to obtain perfected security interest in all of insolvent's receivables, including filing of financing statement pursuant to UCC §§ 9-302(1), 9-304(1), and 9-402(1), had priority over all unsecured general creditors, including investors in the insolvent corporation who held debentures and notes which stated on their face that they were subordinate to claims of all other contract creditors. Coastal Fin. Corp. v. Coastal Fin. Corp., 120 R.I. 317, 387 A.2d 1373 (1978).

B. Decisions Under Former Statutes.

12. In general.

The legislature did not intend by the enactment of this section to subordinate the vendor's lien created by Code 1942, § 337, to the lien of a prior chattel mortgage on after-acquired property executed under the authority of this section, and thereby permit the holder of such prior chattel mortgage to take property that had not been paid for, while still in the hands of the first purchaser, and appropriate it to the payment of the chattel mortgage indebtedness and thereby defeat the vendor's purchase money lien. Trenton Lumber Co. v. Boling, 230 Miss. 233, 92 So. 2d 440 (1957).

Where the holder of a mortgage deed of trust, covering after-acquired property of the purchaser, was charged with notice of the general custom of the lumber trade that planning mill operators, such as the purchaser, paid for rough lumber delivered at the mill by small operators at the end of the week rather than at the time of delivery, it was not in position to claim lack of notice that certain lumber delivered to purchaser by the vendors had not been paid for, and that it had a right to take the lumber and apply it to purchaser's indebtedness without making payment therefor, since the vendors had not lost their purchase money liens. Trenton Lumber Co. v. Boling, 230 Miss. 233, 92 So. 2d 440 (1957).

Under fifteen-year lease providing for lien on lessee's property for rent which was payable monthly, indebtedness secured by lien held to arise within twelve months after its execution as required by statute, though rent was payable in installments. Union Indem. Co. v. Shirley, 170 Miss. 594, 150 So. 825 (1933).

Lessor's lien on property acquired within twelve months after execution of lease held superior to lien of deed of trust executed by lessee, though lessor's lien was intended to cover property to be acquired after expiration of twelve months. Union Indem. Co. v. Shirley, 170 Miss. 594, 150 So. 825 (1933).

Deed of trust may be given upon after-acquired chattel, acquired within twelve months thereafter; deed of trust given upon after-acquired chattel, acquired within twelve months thereafter, prevails over subsequent lien. Tabb v. People's Bank & Trust Co., 160 Miss. 22, 133 So. 137 (1931).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Carriers §§ 345, 346.

68A Am. Jur. 2d, Secured Transactions § 216 et seq. (perfection of security interest).

78 Am. Jur. 2d, Warehouses § 36 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:551-9:553 (instruments, documents, and goods covered by documents).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2037 through 253:2100 (perfection of security interest).

CJS. 13 C.J.S., Carriers §§ 384-389.

Law Reviews. 1983 Mississippi Supreme Court Review: Article 9 priority provisions and right of set-off. 54 Miss. L. J. 105, March, 1984.

§ 75-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 75-8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 75-9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 75-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) or Section 75-8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

SOURCES: Former 1972 Code § 75-9-313 [Codes, 1942, § 41A:9-313; Laws, 1966, ch. 316, § 9-313; Laws, 1968, ch. 488, § 1; Laws, 1977, ch. 452, § 22; Laws, 1992, ch. 303, § 1, eff from and after July 1, 1992]; is now found in comparable provisions enacted at §§ 75-9-334 and 75-9-604 by Laws, 2001, ch. 495, § 1. Present § 75-9-313 was derived from former 1972 Code §§ 75-9-115 [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996] and 75-9-305 [Codes, 1942, § 41A:9-305; Laws, 1966, ch. 316, § 9-305; Laws, 1977, ch. 452, § 17; Laws, 1990, ch. 384, § 52, 1996, ch. 460, § 26; Laws, 1996, ch. 468, § 66, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 66, eff from and after July 1, 2006.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Negotiable instruments, see § 75-3-101 et seq.

Letters of credit, see § 75-5-101 et seq.
Documents of title, see § 75-7-101 et seq.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-305.
6. In general.
7. Goods.
8. Instruments.
9. Money.
10. Documents.
11. Chattel paper.
12. Possession by bailee or agent.
13. Time of perfection.
14. Continuity.
15. Effect on third parties.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-305.

6. In general.

Under UCC, parties to security agreement were free to decide who should have right to possession of collateral. American Honda Motor Co. v. United States, 363 F. Supp. 988 (S.D.N.Y. 1973).

Bare possession of checks was sufficient to create security interest under § 9-305. Barney v. Rigby Loan & Inv. Co., 344 F. Supp. 694 (D. Idaho 1972).

Under the statute, the actions of one seeking to repossess certain personal property from a defaulting vendee were insufficient to perfect the vendor's security interest. L.B. Smith, Inc. v. Foley, 341 F. Supp. 810 (W.D.N.Y. 1972).

7. Goods.

The filing of a financing statement is unnecessary to perfect a security interest in United States coins having a numismatic value in excess of their face value, pledged with and delivered to a bank as collateral for a loan; for such coins are to be considered as "goods" rather than as a medium of exchange. In re Midas Coin Co., 264 F. Supp. 193 (E.D. Mo. 1967), aff'd, 387 F.2d 118 (8th Cir. Mo. 1968).

8. Instruments.

In an action by a bank against a purchaser of truck bodies to obtain monies paid by the purchaser to the Internal Revenue Service after the IRS had issued a tax levy against funds owing to the seller of truck bodies, the trial court properly granted judgment for the bank where the contract between the seller and the purchaser had been delivered, assigned and accepted by the bank to secure a loan to the seller and, thereby, gave the bank a perfected security interest in the contract, an instrument under § 75-9-105, which held priority over the tax lien of the IRS which had never been filed at the principal place of business of the taxpayer. International Harvester Co. v. Peoples Bank & Trust Co., 402 So. 2d 856 (Miss. 1981).

Where a security interest in the proceeds of promissory notes was perfected before the holder of that interest received notice of the existence of a previously filed Internal Revenue Service lien, the holder's right to the proceeds of the notes is not affected by the lien. Lipkowitz & Plaut v. Affrunti, 95 Misc. 2d 849 (1978).

Where two certificates of deposit were indorsed in blank by owners and delivered to bank to enable third party to obtain line of credit from bank; where in connection with delivery of certificates, owners thereof also simultaneously executed two instruments entitled "Consent to Pledge" and "Security Agreement-Pledge" which specifically described collateral (the two certificates of deposit) for proposed extension of credit by bank; and where bank in reliance on such instruments and delivery of the collateral advanced desired line of credit to third party, effect of transaction under UCC § 9-304(1) and § 9-305 was to create and perfect valid security interest in certificates in favor of bank which was enforceable under UCC § 9-203(1). Montavon v. Alamo Nat'l Bank, 554 S.W.2d 787 (Tex. Civ. App. 1977).

When bank surrendered possession of note which it had held as security for loan for more than a year, bank lost security interest which it had previously held. McIlroy Bank v. First Nat'l Bank, 252 Ark. 558, 480 S.W.2d 127 (1972).

9. Money.

Financing statements are not required to be filed to perfect possessory security interest in money; security interests in money can only be perfected by possession. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

A bankruptcy debtor's pre-petition payment to law firms, and their retention of retainers without further action, created valid security interest in favor of law firms; perfection of security interest was achieved by law firms' continuous possession of debtor's funds, subject to the status of frauds and amounts of compensation actually allowed by court. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

Retainers paid by bankruptcy debtor to law firms pre-petition, in which law firms had security interest perfected through possession, were nullified by statute of frauds only to extent that compensation for firm was earned and expenses incurred more than 15 months after firm obtained retainer. In re Viscount Furn. Corp., 133 B.R. 360 (Bankr. N.D. Miss. 1991).

A security interest in money (either originally given or received as proceeds from the negotiation of an instrument) is perfected by possession, and a deposit made by lessee with lessor to secure performance of lease could be set of against lessor's claim against bankrupt lessee. In re Atlanta Times, Inc., 259 F. Supp. 820 (N.D. Ga. 1966), aff'd, 383 F.2d 606 (5th Cir. Ga. 1967).

10. Documents.

Where corporation's stock was physically endorsed by guarantor and voluntarily delivered to corporation as security pursuant to terms of guarantee agreement, and where corporation's receiver subsequently took possession of stock certificates as officer of court and pursuant to statutory authority, such possession was necessary to maintain corporation's security interest in stock under UCC §§ 9-304 and 9-305, and could not be considered prejudgment seizure of property. State ex rel. Hunt v. Liberty Investors Life Ins. Co., 543 P.2d 1390 (Okla. 1975).

Service of order of attachment, which was later vacated, upon garnishee in possession of stock certificates was insufficient to perfect assignee's security interest in stock and to place garnishee and assignor's creditor on notice that assignee had secured interest in shares, whereas garnishee and assignor's creditor, by possession, did properly perfect their security interests under UCC § 9-305. Friedman v. Fein, 46 A.D.2d 886 (2d Dep't 1974).

11. Chattel paper.

Where (1) debtor sold corporate stock on July 25, 1974 to defendants for $180,000, and defendants executed promissory notes under pledge agreement securing payment of stock's purchase price and delivered notes to escrowee, which also received the purchased stock, (2) debtor on March 19, 1975, with knowledge and consent of defendants and escrowee, assigned notes to creditor as collateral to secure payment of prior $60,000 debt, indorsed them to creditor's order, and delivered them to creditor which retained possession of them until August 24, 1976, a date following date on which debtor had fully debt due creditor, (3) on November 5, 1975, when defendants still owed debtor $135,000 on notes and notes were still in creditor's possession as collateral for payment of $28,000 balance then owed by debtor to creditor, debtor entered into agreement with plaintiff law firm and its client under which payments on prior debt owed by debtor to such client were extended, prospective lawsuit was settled, sums thus due to client were collateralized by assignment of debtor's interest in stock-payment notes, and notes themselves and pledge agreement securing them were also assigned to plaintiff on behalf of its client, subject to prior collateral assignment in favor of debtor's first creditor, (4) first creditor on August 24, 1976 acknowledged to escrowee that debtor had fully discharged debt due it, delivered stock-payment notes in suit to plaintiff law firm, but never indorsed notes to plaintiff's order, (5) on August 25, 1976, plaintiff, defendants (purchasers of debtor's stock), debtor, and escrowee executed written acknowledgements of debtor's assignment of notes and pledge agreement to plaintiff, and plaintiff requested that it be paid next installment on notes, which was due on October 1, 1976, (5) on

April 5, 1976, IRS assessed delinquent income-tax liability against debtor and filed notice of tax lien on August 4, 1976, (6) on October 1, 1976, escrowee paid installment payment due on notes to IRS, and (7) on October 5, 1976, plaintiff after due notice declared default on notes (because of failure to receive October 1, 1976 installment payment thereon) and under acceleration clause in notes demanded full payment thereof, court held (1) that plaintiff, as nominee for its client, acquired valid collateral assignment of proceeds of notes to extent that proceeds were not required to satisfy first creditor's prior security interest therein, (2) that under UCC § 3-202(3), debtor's indorsement and negotiation of notes to first creditor merely created partial assignment of notes' proceeds and did not divest debtor of ultimate right to all proceeds not required to satisfy debt owed to first creditor, (3) that debtor's remaining interest in notes' proceeds was the interest that debtor had assigned to plaintiff as collateral on November 5, 1975, and that such assignment, under UCC § 9-204(1), gave plaintiff valid security interest in debtor's residuary interest in notes' proceeds, (4) that plaintiff's security interest in notes' proceeds was not perfected until August 24, 1976, when it became perfected under UCC § 9-305 by possession of notes following first creditor's delivery thereof to plaintiff, (5) that IRS tax lien was not superior to plaintiff's perfected security interest in notes, since neither plaintiff nor its client had received any notice of such lien until September 20, 1976, and (6) that neither plaintiff not its client could accelerate unpaid balance due on notes, since plaintiff, as nominee for its client, was merely holder of security interest in notes and was not "holder" of notes within meaning of UCC § 1-201(20) because of first creditor's failure to indorse them to plaintiff's order. Lipkowitz & Plaut v. Affrunti, 95 Misc. 2d 849 (1978).

Under UCC § 9-305, possessory security interest in ordinary chattel paper requires no filing for perfection. State Tax Comm'n v. Shor, 43 N.Y.2d 151, 371 N.E.2d 523 (1977).

12. Possession by bailee or agent.

Although debtor was acting as some sort of collection agent for creditors by collecting payments on collateral notes and then paying over these funds owing on their own promissory notes to creditors, debtor acting as collection agent for creditors was not type of agent who could take possession of instruments for purposes of perfection under UCC §§ 9-304(1) and 9-305. Huffman v. Wikle, 550 F.2d 1228 (9th Cir. Cal. 1977).

Letter by which owner of paintings and sculptures notified owner of art gallery, who had possession of paintings and sculptures pursuant to consignment agreement and who was thus bailee of paintings and sculptures, that owner had assigned proceeds from sale of paintings and sculptures to secured party, that such proceeds were to be paid to secured party's attorney, and that pre-existing consignment was to be irrevocable unless written release was given by secured party, adequately served to notify owner of gallery of secured party's rights in collateral and thus to perfect secured party's security interest in paintings and sculptures; this interest, perfected as it was before owner of paintings and sculptures filed petition in bankruptcy, took priority over trustee's interest in such objects. Looney v. Nuss, 545 F.2d 916 (5th Cir. Tex. 1977), reh'g denied, 548 F.2d 355 (5th Cir. Tex. 1977), cert. denied, 430 U.S. 987, 97 S. Ct. 1687, 52 L. Ed. 2d 382 (1977).

Security interest of creditor in stock placed in escrow three years prior to filing of bankruptcy by debtor was perfected prior to bankruptcy filing since delivery to escrow company was sufficient to comply with notice requirements of "bailee in possession" provisions under UCC § 9-305; thus creditor's interest was superior to that of debtor as debtor in possession even though delivery of stock by escrow company to creditor occurred after bankruptcy. In re Copeland, 531 F.2d 1195 (3d Cir. Del. 1976).

Where physical possession of stock certificates was voluntarily given up by debtor and placed with escrow holder with agreement and acquiescence of secured creditor, as collateral security for debtor's guarantee of certain loans, pursuant to simultaneously executed pledge and escrow agreements, effective notice to other potential creditors was same as if secured creditor had taken possession of stock certificates; thus, for purpose of perfecting security interest within meaning of UCC § 9-305, escrow holder had possession of certificates as bailee with notice such that secured creditor was "deemed to have [had] possession" as of date of execution of agreements and delivery of stock to escrow holder, and prior to date on which debtor filed petition in bankruptcy. In re Copeland, 391 F. Supp. 134 (D. Del. 1975), vacated on other grounds, 531 F.2d 1195 (3d Cir. Del. 1976).

In replevin action brought by finance company against garage owner, trial court erred in giving priority to finance company's chattel mortgage where it was not shown that such chattel mortgage had been perfected by filing and where, on other hand, garage owner had perfected his interest in automobile since he had possession of it. Henson v. Government Emp. Fin. & Indus. Loan Corp., 257 Ark. 273, 516 S.W.2d 1 (1974).

Where supplier sold truck body kits to debtor, but debtor failed to pay for kits, where bank loaned money to debtor and filed financing statement which listed body kits as collateral, but no separate written security agreement was entered into between bank and debtor, and where body kits were subsequently sold back to supplier and consigned to debtor under agreement giving supplier security interest in kits and supplier filed financing statement covering body kits: (1) bank's financing statement was not effective as security agreement, as required by UCC § 9-203(1)(b), since it did not contain language which specifically created or granted security interest in described collateral; (2) bank did not perfect its security interest in collateral by taking "possession" pursuant to UCC § 9-305, prior to time supplier filed its financing statement with secretary of state, although bank's employees were present on debtor's premises during morning of day during which supplier filed, since bank did not begin loading collateral into its truck until sometime after supplier filed; (3) fact that bank filed and then took possession of collateral did not give bank priority under "first to file" rule of UCC § 9-302(5)(a) since its interest had not attached under UCC § 9-204 prior to time bank took possession and bank could not combine elements of perfecting under filing method with elements under possession method to defeat rule of UCC § 9-305 that there can be no relation back of perfection date when perfection is obtained through possession. Transport Equip. Co. v. Guaranty State Bank, 518 F.2d 377 (10th Cir. Kan. 1975).

Where collateral held by a bank was transferred to it well before filing of notice of a federal tax lien, the bank's right to retain its security interest is unchalleged. In re Bushway Estate, 107 N.H. 135, 218 A.2d 49 (1966).

13. Time of perfection.

Where supplier sold truck body kits to debtor, but debtor failed to pay for kits, where bank loaned money to debtor and filed financing statement which listed body kits as collateral, but no separate written security agreement was entered into between bank and debtor, and where body kits were subsequently sold back to supplier and consigned to debtor under agreement giving supplier security interest in kits and supplier filed financing statement covering body kits: (1) bank's financing statement was not effective as security agreement, as required by UCC § 9-203(1)(b), since it did not contain language which specifically created or granted security interest in described collateral; (2) bank did not perfect its security interest in collateral by taking "possession" pursuant to UCC § 9-305, prior to time supplier filed its financing statement with secretary of state, although bank's employees were present on debtor's premises during morning of day during which supplier filed, since bank did not begin loading collateral into its truck until sometime after supplier filed; (3) fact that bank filed and then took possession of collateral did not give bank priority under "first to file" rule of UCC § 9-302(5)(a) since its interest had not attached under UCC § 9-204 prior to time bank took possession and bank could not combine elements of perfecting under filing method with elements under possession method to defeat rule of UCC § 9-305 that there can be no relation back of perfection date when perfection is obtained through possession. Transport Equip. Co. v. Guaranty State Bank, 518 F.2d 377 (10th Cir. Kan. 1975).

Where collateral held by a bank was transferred to it well before filing of notice of a federal tax lien, the bank's right to retain its security interest is unchalleged. In re Bushway Estate, 107 N.H. 135, 218 A.2d 49 (1966).

14. Continuity.

Failure of creditor with perfected purchase money security interest to renew original filing relegated creditor to standing of unperfected secured creditor; creditor did not reperfect its purchase money lien upon repossession of collateral, due to 20-day perfection requirement. United States v. Williams, 82 B.R. 430 (Bankr. N.D. Miss. 1988).

Where seller of bookbinding machine gave machine to common carrier in New York, and common carrier issued nonnegotiable bill of lading naming Maryland buyer as consignee, and no evidence was presented to show that carrier received notice of seller's purchase money security interest, seller's perfection under Code § 9-305, if it existed at all, did not "continue" when binder was removed from New York to Maryland. In re Automated Bookbinding Servs., Inc., 471 F.2d 546 (4th Cir. Md. 1972).

Where security interest was perfected by filing a financing statement, but no continuation statement was filed, effectiveness of original statement lapsed five years after initial filing and, as result, security interest became unperfected under UCC § 9-403(2), (3); however, lapse of effectiveness of financing statement, while vitiating perfection, had no effect on viability of security agreement itself; thus, where secured party took possession of collateral one day before debtor executed assignment for benefit of creditors, taking of possession by secured party constituted perfection of security interest under UCC §§ 9-302(1)(a), 9-305 and 9-503 which rendered it superior to right therein of assignee. Rosner v. Plaza Hotel Assocs., 146 N.J. Super. 447, 370 A.2d 41 (App. Div. 1977).

15. Effect on third parties.

Sale of unfinished textile fabrics by converter (i.e., one who finishes textiles into dyed and patterned fabrics) to another converter was in ordinary course of first converter's business within meaning of UCC § 9-307(1), even though predominant business purpose of converters was converting of unfinished textiles into finished fabrics, and thus second converter took fabric free from manufacturer's security interest in textiles, although manufacturer's security interest was perfected by possession of goods under UCC § 9-305, where it was shown that converters often purchased unfinished textiles in excess of their requirements, selling such excess through brokers to other converters, and that converters buy such goods if price is satisfactory or particular goods are not available from manufacturers, both of which conditions were satisfied in present case. Tanbro Fabrics Corp. v. Deering Milliken, Inc., 39 N.Y.2d 632, 350 N.E.2d 590 (1976).

RESEARCH REFERENCES

ALR. Priority, as between holder of unfiled or unrecorded chattel mortgage who secures possession of goods or chattels, and subsequent purchaser or encumbrancer. 53 A.L.R.2d 936.

Effect of UCC Article 9 upon conflict, as to funds in debtor's bank account, between secured creditor and bank claiming right of setoff. 3 A.L.R.4th 998.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 97 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:561-9:563 (possession without filing).

§ 75-9-314. Perfection by control.

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106 or 75-9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under Section 75-7-106, 75-9-104, 75-9-105 or 75-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under Section 75-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One (1) of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

SOURCES: Former 1972 Code § 75-9-314 [Codes, 1942, § 41A:9-314; Laws, 1966, ch. 316, § 9-314, eff from and after March 31, 1968] is now found in comparable provisions enacted at § 75-9-335 by Laws, 2001, ch. 495, § 1. Present § 75-9-314 was derived from 1972 Code § 75-8-106 [Laws, 1996, ch. 468, § 7] and former 1972 Code § 75-9-115; [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 67, eff from and after July 1, 2006.

Cross References — Description of property, see § 75-9-108.
Definitions, see § 75-9-201.

§ 75-9-315. Secured party's rights on disposition of collateral and in proceeds.

(a) Except as otherwise provided in this article and in Section 75-2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by Section 75-9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty (20) days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under Section 75-9-515 or is terminated under Section 75-9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

SOURCES: Former 1972 Code § 75-9-315 [Codes, 1942, § 41A:9-315; Laws, 1966, ch. 316, § 9-315, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-336 by Laws, 2001, ch. 495, § 1. Present § 75-9-315 was derived from former 1972 Code § 75-9-306 [Codes, 1942, § 41A:9-306; Laws, 1966, ch. 316, § 9-306; Laws, 1977, ch. 452, § 18; Laws, 1996, ch. 468, § 67, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Course of dealing and trade usage, see § 75-1-303.

Right of seller's creditor to treat sale or identification of goods to contract for sale as void, see § 75-2-402(2).

Power to transfer, see § 75-2-403.

Right of the debtor to use collateral, see § 75-9-205.

Ineffective restrictions, see §§ 75-9-408, 75-9-409.

Indication of collateral in financing statement, see § 75-9-504.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-306.

A. In General; "Proceeds."

6. Generally; excluded transactions.
7. Insurance as proceeds.
8. —Not proceeds.

B. Security Interest as Continuing.

9. In general.
10. "Sale, exchange, or other disposition."
11. Transfer not in ordinary course.
12. Unauthorized disposition.
13. Authorized disposition; waiver.
14. —Manner of authorizing disposition.

15. —Good faith; knowledge.
16. —Collusion, fraud, or the like.
17. Identifiable proceeds.
18. —Proceeds acquired with cash proceeds.
19. —Express terms of security agreement.
20. —Claim of interest in financing statement.
21. —Collections received by debtor.
22. —Commingled proceeds.

C. Perfection as to Proceeds.

23. In general; sufficiency of original filing.
24. —Notation on certificate of title.
25. Temporary interests.
26. Appropriate steps as to proceeds.
27. —Filing.

D. Insolvency Proceedings.

28. In general.
29. Identifiable proceeds; non-cash.
30. —Separate deposit account.
31. —Cash proceeds.
32. Commingled proceeds.
33. —Setoff.
34. —Computing amount recoverable.

E. Rights as to Returned or Repossessed Goods.

35. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-306.

A. In General; "Proceeds."

6. Generally; excluded transactions.

Insurance payments made because of casualty loss of collateral are "proceeds" pursuant to provision of UCC § 9-306(1) added effective July, 1978, which includes "insurance payable to a person other than a party to the security agreement"; where automobile accident occurred in 1975, language of UCC § 9-306(1) is not relevant and UCC § 9-104(g), which states that UCC Art 9 does not apply to a transfer of an interest or claim in or under any insurance policy is applicable. First Nat'l Bank v. Merchant's Mut. Ins. Co., 49 N.Y.2d 725, 402 N.E.2d 1168 (1980).

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right of set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

"Proceeds," as used in UCC § 9-306(2), means the payment (or agreed-on exchange) by the transferee (purchaser) of the collateral to the transferor (debtor), and not proceeds from the transferee's resale of the collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

Security agreement between cattle buyer and bank included all cattle buyer's inventory and all livestock and feed; security agreement provided that cattle buyer would not dispose of collateral other than in ordinary course of business; held, plaintiff on whose behalf cattle buyer purchased cattle and who reimbursed cattle buyer took title to cattle free and clear of any lien interest of bank. Swift & Co. v. Jamestown Nat'l Bank, 426 F.2d 1099 (8th Cir. N.D. 1970).

The purpose of the criminal provisions in this section as enacted in Illinois is to prevent the disposition of the security by the mortgagor to the injury of the mortgagee. First Nat'l Bank v. Padjen, 61 Ill. App. 2d 310, 210 N.E.2d 332 (1st Dist. 1965).

Subdivision (2) of this section cannot be extended to provide the holder of a financing agreement on an automobile with a lien interest in the proceeds derived from a tort action for property damages resulting from an accident, and the holder's security remains solely the depreciated automobile. Hoffman v. Snack, 37 Pa. D. & C.2d 145 (1964).

7. Insurance as proceeds.

Insurance payments made because of casualty loss of collateral are "proceeds" pursuant to provision of UCC § 9-306(1) added effective July, 1978, which includes "insurance payable to a person other than a party to the security agreement"; where automobile accident occurred in 1975, language of UCC § 9-306(1) is not relevant and UCC § 9-104(g), which states that UCC Art 9 does not apply to a transfer of an interest or claim in or under any insurance policy is applicable. First Nat'l Bank v. Merchant's Mut. Ins. Co., 49 N.Y.2d 725, 402 N.E.2d 1168 (1980).

Security interest of bank and federal Small Business Administration in collateral given to secure payment of loan made by bank, which was filed under Texas UCC prior to filing of notice of federal tax lien on insurance funds received when collateral was destroyed by fire, was perfected before attachment of federal tax lien to such funds and continued to exist in such funds as proceeds of the destroyed collateral pursuant to definition of "proceeds" in UCC § 9-306(1). Aetna Ins. Co. v. Texas Thermal Indus., 436 F. Supp. 371 (E.D. Tex. 1977), aff'd, 591 F.2d 1035 (5th Cir. Tex. 1979).

Under amended version of UCC § 9-306(1), proceeds of insurance on collateral are "proceeds of collateral," since they are merely the collateral in another form. Aetna Ins. Co. v. Texas Thermal Indus., 436 F. Supp. 371 (E.D. Tex. 1977), aff'd, 591 F.2d 1035 (5th Cir. Tex. 1979).

In dispute over insurance fund that came into existence because of destruction of mortgaged building and personal property therein, where United States claimed fund by virtue of tax lien filed against mortgagor and mortgagee claimed that such lien could not attach to fund because it did not constitute property belonging to mortgagor, and that even if tax lien could attach to fund, mortgagee had security interest therein that was valid as against the tax lien, court held (1) that disputed fund belonged to mortgagor, and (2) that even though fund belonged to mortgagor, mortgagee was nevertheless entitled thereto because he held perfected security interest therein under UCC § 9-306(1), dealing with "proceeds" from sale or other disposition of collateral, which interest existed before filing of the federal tax lien. Paskow v. Calvert Fire Ins. Co., 579 F.2d 949 (5th Cir. Fla. 1978).

Because original version of UCC § 9-306(1), dealing with proceeds on disposition of collateral, can reasonably be construed to include insurance payable because of loss of or damage to collateral, the 1972 amendment of the statute, which expressly states that insurance payable by reason of loss of or damage to collateral is "proceeds," is a persuasive indication of the effect that original version of the statute was intended to have. Paskow v. Calvert Fire Ins. Co., 579 F.2d 949 (5th Cir. Fla. 1978).

Insurance monies paid for loss of collateral by theft are "proceeds" within meaning of UCC § 9-306(1). Insurance Mgt. Corp. v. Cable Servs., Inc., 359 So. 2d 572 (Fla. App. 1978).

Under security agreement granting creditor security interest in inventory and equipment and further providing that debtor would maintain insurance policy on collateral with creditor as payee, and providing that security interest was to continue in proceeds from inventory, creditor had valid security interest in proceeds of fire insurance policy upon destruction of inventory under UCC § 9-306(1), where party's clear intention was to give secured party benefit of insurance proceeds; UCC § 9-104(g), providing that Article Nine does not apply "to a transfer of an interest or claim in or under any policy of insurance" is applicable only in situations where parties to security agreement attempt to create direct security interest in insurance policy by making policy itself immediate collateral securing transaction, and not to situations where security agreement creates both direct security interest in inventory and/or equipment and requires debtor to provide his creditor with further protection by insuring collateral. PPG Indus., Inc. v. Hartford Fire Ins. Co., 531 F.2d 58 (2d Cir. N.Y. 1976).

Proceeds from fire insurance policy covering secured collateral constituted "proceeds" within meaning of UCC § 9-306(1), and hence were subject to secured party's security interest, where security agreements required debtor to procure insurance on collateral in favor of secured party, "proceeds" box in both security agreements was checked, rider to second security agreement assigned all sums payable under such insurance to secured party as further security for its loan, and rider was attached to insurance policy making loss payable to secured party "as interests may appear." Firemen's Fund Am. Ins. Co. v. Ken-Lori Knits, Inc., 399 F. Supp. 286 (E.D.N.Y. 1975).

In view of policy considerations behind Article 9, as well as policy of 26 USCS § 6323 to give preference to security interests as defined by that provision, creditor had security interest in proceeds of insurance which took precedence over government's tax lien where creditor had security interest in debtor's inventory and where parties intended proceeds of insurance on that collateral to be further security for loan. PPG Indus., Inc. v. Hartford Fire Ins. Co., 384 F. Supp. 91 (S.D.N.Y. 1974), aff'd, 531 F.2d 58 (2d Cir. N.Y. 1976).

Under UCC § 9-306(2) secured party had right to require debtors to turn over to secured party for application on note proceeds of insurance check issued for damages to machinery rather than allowing debtors to use proceeds to repair machinery. Northside Properties, Inc. v. Ko-Ko Mart, Inc., 28 N.C. App. 532, 222 S.E.2d 267 (1976), review denied, 289 N.C. 615, 223 S.E.2d 392 (1976).

8. —Not proceeds.

Insurance covering auto destroyed by fire in 1975 was not "proceeds" within the meaning of UCC § 9-306 as such statute read prior to amendment effective July 2, 1978. First Nat'l Bank v. Merchant's Mut. Ins. Co., 49 N.Y.2d 725, 402 N.E.2d 1168 (1980).

Because original version of UCC § 9-306(1), dealing with proceeds on disposition of collateral, can reasonably be construed to include insurance payable because of loss of or damage to collateral, the 1972 amendment of the statute, which expressly states that insurance payable by reason of loss of or damage to collateral is "proceeds," is a persuasive indication of the effect that original version of the statute was intended to have. Paskow v. Calvert Fire Ins. Co., 579 F.2d 949 (5th Cir. Fla. 1978).

Where (1) first buyer of dry cleaning and laundry equipment violated security agreement with seller by not procuring insurance on equipment, (2) first buyer later sold equipment to another buyer, who procured insurance on it before it was destroyed by fire, and (3) insurer refused to pay insurance proceeds to secured creditor of first buyer, court held that secured creditor had no right to such proceeds under UCC § 9-306(1) because (1) purpose of UCC § 9-306(1) is to declare secured party's right to proceeds, including insurance proceeds, that are received by debtor on debtor's disposal of collateral, and (2) in present case, insurance proceeds were not received by secured party's debtor (first buyer). McGraw-Edison Credit Corp. v. Allstate Ins. Co., 62 A.D.2d 872 (2d Dep't 1978).

A secured creditor has no statutory right to recover insurance proceeds directly from the insurer of the debtor's buyer; section 9-306 of the Uniform Commercial Code was enacted to state a secured party's right to proceeds received by the debtor on disposition of the collateral, and, effective July 2, 1978 (L 1977, ch 866), it was specifically amended to provide that "Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement", thus making it clear that a secured creditor has a statutory right to share in insurance proceeds payable to the debtor, but not in insurance proceeds payable to a third party. McGraw-Edison Credit Corp. v. Allstate Ins. Co., 62 A.D.2d 872 (2d Dep't 1978).

B. Security Interest as Continuing.

9. In general.

Under the Uniform Commercial Code, title to goods passes at delivery, with only the reservation of a security interest by the seller permitted (Uniform Commercial Code, § 2-401, subd [1]); rules on chattel mortgages and conditional sales are now governed by article 9 of the code, and are considered as a single security device and, while under section 9-306 a security interest continues in any identifiable proceeds of collateral covered by the security agreement and a third party may be liable in conversion for paying those proceeds without satisfying the secured party's interest, there is no justification for extending the statute to include a cause of action within the meaning of identifiable proceeds. Accordingly, in a negligence action by plaintiff bank against defendant driver of a borrowed car in which the bank had a security interest, which car was destroyed in an accident, allegedly because of defendant's negligence, defendant was granted summary judgment since plaintiff failed to state a cause of action. Bank of N.Y. v. Margiotta, 99 Misc. 2d 423 (1979).

Although UCC § 9-311 provides that debtor's rights in collateral may be voluntarily or involuntarily transferred, such provision must be read together with UCC § 9-306(2) which provides that security interest continues in collateral, notwithstanding sale, exchange, or other disposition thereof by debtor, unless debtor's action was authorized by secured party in security agreement or otherwise. American Heritage Bank & Trust Co. v. O. & E., Inc., 40 Colo. App. 306, 576 P.2d 566 (1978).

Under UCC § 9-306(2) and Official Comment 2(c), transferees in the ordinary course of the debtor's business take free of a security interest in proceeds. However, the security interest in proceeds continues until the funds are actually transferred in the ordinary course of business. Citizens Nat'l Bank v. Mid-States Dev. Co., 177 Ind. App. 548, 380 N.E.2d 1243, 3 A.L.R.4th 987 (1978).

Under UCC § 9-311, transfer by debtor of property which is subject to a security interest is not wrongful in itself and does not result in an automatic default. Moreover, under UCC § 9-306(2), debtor's sale of the property does not destroy or affect continuing validity of creditor's security interest. Production Credit Ass'n v. Equity Coop Livestock Sales Ass'n, 82 Wis. 2d 5, 261 N.W.2d 127 (1978).

When a debtor makes an unauthorized disposition of collateral, the security interest in most cases continues, under UCC § 9-306(2), in original collateral in the hands of the purchaser or other transferee. And since the transferee takes the collateral subject to the security interest therein, the secured party may repossess the collateral from him or, in an appropriate case, maintain an action for conversion. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

Where secured party entered into security agreement with partnership engaged in appliance business, covering "all present inventory belonging to the Dealer as well as any and all subsequently acquired inventory," where partnership assets were subsequently transferred to newly formed corporation, and where new financing statement was filed under name of partnership but was not filed with reference to corporation as debtor, security agreement containing after-acquired property clause was effective against newly-formed corporation and secured party's security interest extended to inventory subsequently acquired by corporation; fact that financing statement was filed under partnership name, "Clint's Appliance Sales and Service," rather than corporate name, "Clint's Appliance Sales and Service, Inc.," would not cause secured party's security interest to be unprotected against either corporation or trustee in bankruptcy; but, even if it could be said that financing statement was in some way misleading, under UCC § 9-402(7) (1972 Official Text) secured party's security interest remained perfected under its financing statement with partnership at least four months after partnership changed its "name, identity or corporate structure." Fliegel v. Associates Capital Co., 272 Or. 434, 537 P.2d 1144 (1975).

Where secured party's security interest continued in bowling equipment after it was sold to purchaser, purchaser acquired seller's interest in equipment with knowledge of secured party's claim and pending replevin action, purchaser was bound by replevin judgment, notwithstanding purchaser was not party to replevin action, and process could issue under replevin judgment to put secured party in possession of equipment. S.T. Enters., Inc. v. Brunswick Corp., 57 Ill. 2d 461, 315 N.E.2d 1 (1974).

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

Proceeds extended to unpaid purchase price for collateral, notwithstanding claim that accounts receivable did not constitute proceeds from collateral but proceeds from contract right. Farnum v. C.J. Merrill, Inc., 264 A.2d 150 (Me. 1970).

Rejecting the contention of a buyer of an automobile from a dealer without notice of a prior security interest that UCC § 2-403(1) provided an escape from the prior security interest, the court held that UCC § 9-306(2) which provides for the continuation of the security interest except when "this Article" provides otherwise limited any exceptions to those contained in Article 9. National Shawmut Bank v. Jones, 108 N.H. 386, 236 A.2d 484 (1967).

Federal law rather than state law would control an action based upon an alleged conversion by an auctioneer by sale at public auction of cattle against which the Farmers Home Administration had a recorded security agreement executed in its favor by the owner of the cattle. United States v. Sommerville, 324 F.2d 712 (3d Cir. Pa. 1963), cert. denied, 376 U.S. 909, 84 S. Ct. 663, 11 L. Ed. 2d 608 (1964).

10. "Sale, exchange, or other disposition."

Perfected security interest in television equipment survived transfer of equipment pursuant to reorganization even though creditor failed to amend financing statement to indicate new name of corporation where transfer was not a sale, exchange or disposition but merely involved a change of corporate name. In re Kittyhawk Tel. Corp., 75 Ohio Op. 2d 469, 516 F.2d 24 (6th Cir. Ohio 1975).

Where secured party had perfected purchase money security interest in television equipment which it sold to debtor, subsequent transfer of all assets and liabilities of debtor corporation to newly formed corporation having same shareholders, officers and directors as debtor did not constitute "sale, exchange, or other disposition" of secured property within meaning of UCC § 9-306(2); thus, financing statement which was properly filed continued to be effective after transfer of assets and liabilities, although no amendment to financing statement was made to reflect change in name of debtors, where name change was minor and not seriously misleading, and financing statement was accurate in every other detail. In re Kittyhawk Tel. Corp., 75 Ohio Op. 2d 469, 516 F.2d 24 (6th Cir. Ohio 1975).

Where truck dealer ordered two trucks from manufacturer, trucks were delivered under "floor plan" arrangement with manufacturer whereby dealer executed note and security agreement covering trucks, which was assigned to credit company, where purchaser executed two security agreements and notes for purchase of trucks which were assigned by dealer to purchaser's finance company, but where delivery of trucks to purchaser was delayed and, in fact, purchaser never made cash down payment and never actually took possession of trucks there was, nonetheless, sale of trucks when purchaser executed security agreements and notes; thus, security interest obtained by purchaser's lender took priority over security interest in trucks held by dealers credit company. International Harvester Credit Corp. v. Associates Fin. Servs. Co., 133 Ga. App. 488, 211 S.E.2d 430 (1974).

Where president and principal shareholder of automobile dealership purchases car from his own company, that sale will be considered to be sale "in ordinary course of business" if it is similar in all material respects to sale to any other retail customer; and where that is the case, lien held by bank which has security agreement covering dealership's inventory is released by sale, and purchase money security interest prevails. Crystal State Bank v. Columbia Heights State Bank, 295 Minn. 181, 203 N.W.2d 389 (1973).

Where a debtor sells collateral subject to a perfected security interest, the secured party may proceed (1) against the debtor (a) to collect the debt or (b) assert his rights to any identifiable proceeds in the hands of the debtor; or (2) against the purchaser by (a) repossession of the purchased goods in person or by an action of replevin or (b) by an action of trespass for conversion of the collateral. Once the purchaser has resold the collateral, the secured party has no contract right of action against the purchaser, either for the original debt or for the proceeds of the sale. Beneficial Fin. Co. v. Colonial Trading Co., 43 Pa. D. & C.2d 131 (1967).

11. Transfer not in ordinary course.

In marital property-division proceeding, trial court had authority under UCC § 9-311, providing that debtor's rights in collateral may be voluntarily or involuntarily transferred by judicial process, to direct husband to transfer title to bonds, which had been pledged as security for loan, to wife. However, any title that was involuntarily transferred by judicial order would be subject, under UCC § 9-306(2), to security interest created by the pledge, since wife, as party to suit in which such transfer was made, was not buyer in ordinary course of business under UCC §§ 1-201(9) and 9-307(1) who could take collateral (bonds) free of pledgee's security interest therein. Goetz v. Goetz, 567 S.W.2d 892 (Tex. Civ. App. 1978).

Under UCC § 9-306(2) and Official Comment 2(c), transferees in the ordinary course of the debtor's business take free of a security interest in proceeds. However, the security interest in proceeds continues until the funds are actually transferred in the ordinary course of business. Citizens Nat'l Bank v. Mid-States Dev. Co., 177 Ind. App. 548, 380 N.E.2d 1243, 3 A.L.R.4th 987 (1978).

Purchaser of automobile covered by security interest was liable to secured party for conversion where automobile dealer, who was indebted to purchaser for $10,000, gave purchaser check for $5,000 in partial satisfaction of such debt, and purchaser indorsed check back to dealer in payment for automobile: (1) when dealer executed and delivered check to purchaser, it did not alter fact that dealer was still indebted to purchaser for $10,000 and indorsed check back to dealer in payment for automobile, transaction constituted transfer of automobile for or in partial satisfaction of money debt and purchaser was not, therefore, "buyer in ordinary course of business" within meaning of UCC § 1-201(9), whether or not he acted in good faith and whether or not at time he received check he intended to exchange it for automobile; (2) since purchaser was not "buyer in ordinary course of business" he did not take automobile free from security interest under UCC § 9-307(1), but took it subject thereto under UCC § 9-306(2), and he converted secured party's security interest when he took possession of car through unauthorized sale by dealer, removed it from dealer's place of business in violation of terms of security agreement, and began driving it as his family car. Chrysler Credit Corp. v. Malone, 502 S.W.2d 910 (Tex. Civ. App. 1973).

Where defendant pawnshop purchased television sets from debtor who was not in business of selling television sets, and later resold them, defendant pawnshop was liable to secured party with purchase money security interest, despite fact that security interest was never recorded. White-Sellie's Jewelry Co. v. Goodyear Tire & Rubber Co., 477 S.W.2d 658 (Tex. Civ. App. 1972).

12. Unauthorized disposition.

Where (1) bank advanced loan, guaranteed by Federal Small Business Administration, to owner of business, (2) bank secured loan by perfected security interest in all of debtor's furniture, fixtures, machinery, and equipment, (3) bank filed financing statement which listed debtor's corporation as debtor, and (4) such corporation, without knowledge or consent of bank or SBA as secured creditors, sold collateral subject to creditors' security interest to second corporation which became bankrupt and had its assets sold at public auction, court held (1) that bankruptcy judge committed error in ruling that although bank and SBA did not impliedly or expressly consent to transfer of collateral to second corporation, failure of bank and SBA to file financing statement naming second corporation as debtor rendered bank's and SBA's previously perfected security interest ineffective against second corporation, and (2) that under Cal UCC § 9-306(2), stating that security interest continues in collateral notwithstanding its sale by debtor unless disposition was authorized by secured party, and Cal UCC § 9-402(6), providing that filed financing statement remains effective with respect to collateral transferred by debtor, even though secured party knows of or consents to such transfer, security interest of bank and SBA clearly survived subsequent transfer of collateral to second corporation. United States v. Ocean Elecs. Corp., 451 F. Supp. 511 (S.D. Cal. 1978).

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right of set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral-in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

When a debtor makes an unauthorized disposition of collateral, the security interest in most cases continues, under UCC § 9-306(2), in original collateral in the hands of the purchaser or other transferee. And since the transferee takes the collateral subject to the security interest therein, the secured party may respossess the collateral from him or, in an appropriate case, maintain an action for conversion. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

Under the Uniform Commercial Code, it is clear that a secured party cannot sue for conversion of the collateral as a result of its disposition by the debtor, unless such disposition was unauthorized, since under UCC § 9-306(2), a disposition that was authorized by the secured party will result in loss of the security interest in the collateral itself and in retention of a security interest only in identifiable proceeds. In most cases, however, the security agreement itself will define default to include any unauthorized disposition of the collateral, thus entitling the secured party to sue for its conversion. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

Where bank had perfected security interest in cattle under agreement which prohibited sale of collateral without bank's prior written approval and where farmer sold cattle without such approval, security interest survived sale pursuant to UCC § 9-306(2) and buyers were liable for conversion, even though in prior transactions with debtor bank had not objected to such sales of collateral, as UCC § 1-205(4) provides that course of dealings may be used to interpret terms of agreement but not to contradict them. Wabasso State Bank v. Caldwell Packing Co., 308 Minn. 349, 251 N.W.2d 321 (1976).

Under UCC § 9-306, security interest of bank in equipment continued upon transfer of equipment by debtor to his solely owned corporation, where evidence established that secured party did not authorize the transfer. Bank of Virginia-Central v. Taurus Constr. Co., 30 N.C. App. 220, 226 S.E.2d 685 (1976), cert. denied, 290 N.C. 659, 228 S.E.2d 450 (1976).

Code does not prevent secured party from attaching conditions or limitations to its consent to sales of collateral by debtor; and if sale by debtor violates conditions imposed, sale is unauthorized and security interest continues in collateral. Baker Prod. Credit Ass'n v. Long Creek Meat Co., 266 Or. 643, 513 P.2d 1129 (1973).

Where a manufacturer of garden supplies distributed its products only through authorized dealers and its financing subsidiary took trust receipts on the goods sold expressly prohibiting dealers to resell except to authorized consumers, and the security interest had been established according to law, goods purchased from a dealer by a discount house with knowledge of provisions of the trust receipt took the same subject to the manufacturer's security interest. O.M. Scott Credit Corp. v. Apex Inc., 97 R.I. 442, 198 A.2d 673 (1964).

Subsection (2) of this section provides for the continuation of a security interest in proceeds derived from an unauthorized "sale, exchange, or other disposition of property," but it cannot be extended to include instances where property has not been transferred, but has simply become depreciated through no fault of the debtor, and absent a sale, exchange, or other disposition, there can be no proceeds such as this section contemplates, and the creditor's security remains solely in the depreciated personal property still in the debtor's possession. Hoffman v. Snack, 37 Pa. D. & C.2d 145 (1964).

13. Authorized disposition; waiver.

Where bank, which had perfected security interest in debtor's cattle, agreed to extension of time for performance of debtor's contract to sell cattle to third party but later, after realizing that proceeds from such sale would not be sufficient to pay off bank's loan to debtor, foreclosed on cattle in debtor's possession and sold them to such third party, third party in suit against bank for contract interference could not successfully contend that bank had waived its security interest in cattle under UCC § 9-306(2), which provides that security interest continues in collateral notwithstanding its "sale, exchange, or other disposition" unless "the disposition was authorized by the secured party," since no sale, exchange, or other disposition of the cattle was ever actually made to such third party that would bring UCC § 9-306(2) into operation. Weisbart & Co. v. First Nat'l Bank, 568 F.2d 391 (5th Cir. Tex. 1978).

Following acquiescence in, and sale of, the collateral, the farm-products lender stands on the same footing as the inventory financer. Under UCC § 9-306(2) and UCC § 9-307(1), neither has a continuing security interest in the collateral. However, each retains a threshold of protection because his security interest attaches to the proceeds of the sale. Weisbart & Co. v. First Nat'l Bank, 568 F.2d 391 (5th Cir. Tex. 1978).

Lender which permitted its debtor to sell collateral from time to time as debtor chose, and relied upon debtor to bring in proceeds from sale, declining to exercise its right to require debtor to include lender's name as payee on checks representing proceeds of sale of collateral, acquiesced in and consented to sale and lost its security interest pursuant to Code § 9-306(2). United States v. Central Livestock Ass'n, 349 F. Supp. 1033 (D.N.D. 1972).

Alleged statement of Farmers Home Administration agent that supply corporation-seller would be able to look to farming proceeds of supply buyer did not rise to level of waiver of Administration's security interest in proceeds under Code § 9-306(2). United States v. Greenwich Mill & Elevator Co., 17 Ohio Misc. 71, 291 F. Supp. 609 (N.D. Ohio 1968).

UCC § 9-306(2) codifies the common-law waiver. However, although prior course of dealing, without more, is not sufficient to waive written agreement to the contrary in light of UCC § 1-205(4), any course of performance or other conduct subsequently to the agreement can amount to a waiver. Southwest Wash. Prod. Credit Ass'n v. Seattle-First Nat'l Bank, 19 Wash. App. 397, 577 P.2d 589 (1978), overruled on other grounds, 92 Wash. 2d 30, 593 P.2d 167 (1979).

Under UCC § 9-306(2), a security interest continues in the collateral after it is sold, unless the sale was authorized by the secured party. Therefore, in the absence of an authorized transfer, the buyer takes the property subject to the security interest therein, and the secured party can maintain an action against him. The defenses available to the buyer in such a case are (1) that the secured party authorized the sale, and (2) that the secured party waived its security interest. Montgomery v. Fuquay-Mouser, Inc., 567 S.W.2d 268 (Tex. Civ. App. 1978).

In suit by lender against auctioneer for conversion of cattle constituting lender's collateral by sales in which proceeds were remitted only to debtor, (1) provisions in security agreement specifically authorizing debtor to sell cattle and other collateral with lender's prior written consent, or with payment made jointly to debtor and lender, did not violate UCC § 1-205(4) or § 9-306(2), and did not constitute either express waiver of lender's security interest in cattle or express consent to sales complained of; (2) lender under UCC § 1-205(4) did not impliedly consent to such cattle sales, and thus impliedly waive its security interest, by its course of conduct in allowing debtor to sell other collateral in debtor's name, receive payment therefor, and remit proceeds to lender without admonishing debtor for his violation of security agreement's provisions; (3) lender's statement to debtor that he could sell cattle "providing he applied the proceeds from that sale" constituted express consent to sell cattle in manner not designated in security agreement; and (4) defendant auctioneer, as debtor's agent, required same right to sell that debtor possessed, thus rendering auctioneer not liable for conversion. North Cent. Kan. Prod. Credit Ass'n v. Washington Sales Co., 223 Kan. 689, 577 P.2d 35 (1978).

Under the Uniform Commercial Code, it is clear that a secured party cannot sue for conversion of the collateral as a result of its disposition by the debtor, unless such disposition was unauthorized, since under UCC § 9-306(2), a disposition that was authorized by the secured party will result in loss of the security interest in the collateral itself and in retention of a security interest only in identifiable proceeds. In most cases, however, the security agreement itself will define default to include any unauthorized disposition of the collateral, thus entitling the secured party to sue for its conversion. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

In action for conversion of milk and sale proceeds thereof, where (1) perfected security agreement covering contract for sale of cows and dairy equipment provided that secured party would have lien on all milk produced by cows, that all milk should be sold by defendant who was not party to sales contract, and that defendant should pay specified monthly sum from proceeds of such sales to secured party, and (2) where defendant notified secured party that authorization to pay contained in security agreement was not acceptable as assignment of sales proceeds and requested secured party to memorialize such agreement on forms acceptable to defendant, but secured party never complied with such request, court would hold (1) that under UCC § 9-306(2), authorization in security agreement for sale of milk (collateral) waived any interest of secured party in proceeds of collateral; (2) under UCC § 9-318(3), defendant had right to make reasonable request that secured party furnish proof of assignment of proceeds of sales; and (3) since such proof was never furnished, no assignment was ever made. Raley v. Milk Producers, Inc., 90 N.M. 720, 568 P.2d 246 (Ct. App. 1977), cert. denied, 91 N.M. 3, 569 P.2d 413 (1977).

Notwithstanding accommodation party who signed note as maker would otherwise have been jointly and severably liable on note as co-maker under UCC § 3-118 and § 3-415, accommodation party was totally discharged under UCC §§ 3-606 and 9-306 by secured creditor's impairment of collateral where collateral, which was not in possession of secured creditor, was sold by principal debtor with express authority of secured creditor and value of collateral exceeded value of debt. Beneficial Fin. Co. v. Marshall, 551 P.2d 315 (Okla. Ct. App. 1976).

Where bank which had security interest in crops grown on farm authorized sale of corn crop, lien was lost; and buyer who made final payment for corn by check payable only to owner of farm had no obligation or liability to bank. Farmers Nat'l Bank v. Ceres Land Co., 32 Colo. App. 290, 512 P.2d 1174 (1973).

Where security agreement did not require written consent of bank prior to sale of secured cattle, and bank acknowledged general course of dealing permitting debtor to sell hogs and horses which had served as collateral for previous loans, evidence supported finding that bank consented to sale of cattle. Lisbon Bank & Trust Co. v. Murray, 206 N.W.2d 96 (Iowa 1973).

Where sale of collateral is authorized, lien is divested and purchaser takes property free of it, even if he had actual notice of security interest and was unaware it was waived. Lisbon Bank & Trust Co. v. Murray, 206 N.W.2d 96 (Iowa 1973).

Effect of creditor's waiver upon its right to recover proceeds of conversion.-Where a bank, holding a perfected security interest in certain cattle, had, by its course of conduct, permitted acquiesced in, and consented to the debtor making a series of sales of the security through defendant's commission house and market agency, waived its possessory rights to the extent that the sales did not constitute a wrongful conversion by the defendant, and when the debtor failed to remit the proceeds of the sales to the bank it was not entitled to recover such proceeds from the defendant. Clovis Nat'l Bank v. Thomas, 77 N.M. 554, 425 P.2d 726 (1967).

14. —Manner of authorizing disposition.

Although security agreement covering livestock expressly prohibited debtor from selling collateral without written consent of secured party, debtor had implied authority to sell collateral free from security interest under UCC § 9-306(2) where, from beginning of secured party's relationship with debtor, sales of livestock pledged as collateral were made to various livestock dealers, and where secured party had knowledge of this, raised no objection, accepted checks from these sales for credit to debtor's account, and clearly relied on debtor's honesty to properly account for proceeds; this established course of dealing which constituted authority to sell livestock free from security interest, notwithstanding claim that, under UCC § 1-205(4), express terms of security agreement prohibiting sale controlled. Hedrick Sav. Bank v. Myers, 229 N.W.2d 252 (Iowa 1975).

In action by secured creditor against purchaser of collateral which arose when debtor failed to account for proceeds of sale, issue of fact existed as to whether creditor had consented, under UCC § 9-306(2), to sale of collateral, either directly or impliedly by its prior course of conduct. Central Wash. Prod. Credit Ass'n v. Baker, 11 Wash. App. 17, 521 P.2d 226 (1974).

Order directing seizure of tractors and trailers which were listed as collateral in security agreement and which had been sold by debtor to defendants could not stand where there was factual question as to whether, under UCC § 9-306(2), creditor, by reason of its prior dealings with debtor, had authorized it to sell chattels free of any liens by asserting its right to receive "proceeds" if chattels were sold. Long Island Trust Co. v. Porta Aluminum Corp., 44 A.D.2d 118 (2d Dep't 1974).

Written security agreement providing that debtor would not sell or otherwise dispose of collateral without prior written consent of secured party controlled over evidence of trade usage or course of dealings with respect to determination whether sale of collateral was impliedly authorized by inclusion of proceeds as collateral. United States v. E.W. Savage & Son, 343 F. Supp. 123 (D.S.D. 1972), aff'd, 475 F.2d 305 (8th Cir. S.D. 1973).

Motion for summary judgment denied in action for conversion of tobacco crop pledged as security for loan; held, lack of diligence on part of FHA in protecting its rights in tobacco crop, i.e. failure to notify warehouseman of its lien, fell short of implied authority to debtor and warehouseman to dispose of collateral free of security interest. United States v. Big Z Whse., 311 F. Supp. 283 (S.D. Ga. 1970).

15. —Good faith; knowledge.

Although security agreement covering livestock expressly prohibited debtor from selling collateral without written consent of secured party, debtor had implied authority to sell collateral free from security interest under UCC § 9-306(2) where, from beginning of secured party's relationship with debtor, sales of livestock pledged as collateral were made to various livestock dealers, and where secured party had knowledge of this, raised no objection, accepted checks from these sales for credit to debtor's account, and clearly relied on debtor's honesty to properly account for proceeds; this established course of dealing which constituted authority to sell livestock free from security interest, notwithstanding claim that, under UCC § 1-205(4), express terms of security agreement prohibiting sale controlled. Hedrick Sav. Bank v. Myers, 229 N.W.2d 252 (Iowa 1975).

Sale of collateral was not in violation of security interest where contract of sale existed prior to security interest and, at time security agreement was executed, secured party had knowledge of and acquiesced in sale; held, buyer takes free of security interest created by seller in favor of secured party. First Fin. Co. v. Akathiotis, 110 Ill. App. 2d 377, 249 N.E.2d 663 (1st Dist. 1969).

16. —Collusion, fraud, or the like.

Missouri courts would not permit defendant bank to retain amount debited outside usual course of business and thereby defeat security interest of plaintiff in identifiable proceeds of sale of 6 automobiles, where evidence indicated that debtor asked bank to debit his account for amount owed to bank and refused to writ bank check for amount indicating that he wished to keep plaintiff from collecting on previously issued checks, and debiting transaction transpired after close of bank's business. Universal C.I.T. Credit Corp. v. Farmers Bank, 358 F. Supp. 317 (E.D. Mo. 1973).

17. Identifiable proceeds.

Under the Uniform Commercial Code, title to goods passes at delivery, with only the reservation of a security interest by the seller permitted (Uniform Commercial Code, § 2-401, subd [1]); rules on chattel mortgages and conditional sales are now governed by article 9 of the code, and are considered as a single security device and, while under section 9-306 a security interest continues in any identifiable proceeds of collateral covered by the security agreement and a third party may be liable in conversion for paying those proceeds without satisfying the secured party's interest, there is no justification for extending the statute to include a cause of action within the meaning of identifiable proceeds. Accordingly, in a negligence action by plaintiff bank against defendant driver of a borrowed car in which the bank had a security interest, which car was destroyed in an accident, allegedly because of defendant's negligence, defendant was granted summary judgment since plaintiff failed to state a cause of action. Bank of N.Y. v. Margiotta, 99 Misc. 2d 423 (1979).

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right of set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral-in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

Under the Uniform Commercial Code, it is clear that a secured party cannot sue for conversion of the collateral as a result of its disposition by the debtor, unless such disposition was unauthorized, since under UCC § 9-306(2), a disposition that was authorized by the secured party will result in loss of the security interest in the collateral itself and in retention of a security interest only in identifiable proceeds. In most cases, however, the security agreement itself will define default to include any unauthorized disposition of the collateral, thus entitling the secured party to sue for its conversion. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Ct. App. 1977).

Perfected security interest in cattle feed did not, in and by itself, extend under UCC § 9-315(1) and UCC § 9-307(1) to cattle which ate such feed since feed, after being eaten, not only lost its identity under UCC § 9-315(1), but also ceased to exist within meaning of UCC § 9-315(1) and UCC § 9-307(1). Moreover, cattle which ate feed did not constitute "proceeds" thereof within meaning of UCC § 9-306(1) and (2). First Nat'l Bank v. Bostron, 39 Colo. App. 107, 564 P.2d 964 (1977).

Where secured party had perfected security interest in all of debtor's present and future accounts and contract rights, including proceeds therefrom, where debtor obtained purchase orders for shoes from buyer and assigned purchase orders to export-import company, and where export-import company performed purchase orders and delivered shoes to buyer, account generated by export-import company's performance of debtor-buyer contract did not constitute "proceeds" of that contract within meaning of UCC § 9-306. American E. India Corp. v. Ideal Shoe Co., 400 F. Supp. 141 (E.D. Pa. 1975), aff'd, 568 F.2d 768 (3d Cir. Pa. 1978).

Description of collateral as crops and "proceeds" from crops was sufficient to include federal subsidy payments to which debtor became entitled. In re Munger, 495 F.2d 511 (9th Cir. Cal. 1974).

Where debtor cattle raiser sold livestock to slaughtering company which sold carcasses to meat packer, secured party's security interest in debtor's livestock covered "proceeds" of carcasses in hands of packing company, so that checks paid by packing company to bank which financed slaughtering company were "proceeds" subject to secured party's security interest, even though they were paid to bank rather than to seller or to debtor. Baker Prod. Credit Ass'n v. Long Creek Meat Co., 266 Or. 643, 513 P.2d 1129 (1973).

Buyer traded in trucks as partial payment for new trucks from dealer which had knowledge of seller's unperfected security interest in trucks; held, since trucks were "proceeds" of sale of original chattels, seller retained rights against new trucks; but dealer's purchase money security interest in new trucks was superior to seller's unperfected security interest, even though dealer had knowledge of this interest. Noble Co. v. Mack Fin. Corp., 107 R.I. 12, 264 A.2d 325 (1970).

18. —Proceeds acquired with cash proceeds.

Corporate officers of debtor were not personally liable for conversion of proceeds from sale of inventory in which creditor had perfected security interest under UCC § 9-306(3)(a) where security agreement, rather than requiring creditor to segregate specific proceeds of each sale from debtor's general funds, merely required debtor to pay "amounts due." Independence Disct. Corp. v. Bressner, 47 A.D.2d 756 (2d Dep't 1975).

19. —Express terms of security agreement.

Since bank did not have security agreement covering after-acquired property, it was not entitled to proceeds from sale of cattle here in question. Tri-County Livestock Auction Co. v. Bank of Madison, 228 Ga. 325, 185 S.E.2d 393 (1971), on remand, 125 Ga. App. 126, 186 S.E.2d 542 (1971).

20. —Claim of interest in financing statement.

Declaration in financing statement that "proceeds of collateral are also covered" extended to unpaid purchase price for collateral, notwithstanding contention that accounts receivable did not constitute proceeds form collateral but proceeds from contract right. Farnum v. C.J. Merrill, Inc., 264 A.2d 150 (Me. 1970).

Code requirement that creditor add "proceeds" in his financing statement cannot be used to imply estoppel or waiver of lien security interest or consent to sell free of security interest. Vermilion County Prod. Credit Ass'n v. Izzard, 111 Ill. App. 2d 190, 249 N.E.2d 352 (4th Dist. 1969).

A creditor whose collateral consisted of present and future inventory and accounts receivable who failed to claim "proceeds" in its financing statement had been negligent and grossly misleading, and such failure was prejudicial to the creditor's claim to proceeds of accounts receivable as against the rights of creditors who filed subsequent financing statements. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

21. —Collections received by debtor.

Under UCC §§ 9-306(2) and 9-307(1), secured party's perfected security interest in cotton crop followed debtor's sale of crop to cotton buyer, and buyer was liable to secured party for any sums paid debtor for such cotton that debtor had not remitted to secured party. Oxford Prod. Credit Ass'n v. Dye, 368 So. 2d 241 (Miss. 1979).

In dispute between executrix of debtor's estate and creditor claiming security interest in bank account, security agreement identifying collateral as all existing and after-acquired contract rights and all proceeds of all such contract rights and accounts owned by debtor was sufficient to create security interest in after-acquired property under UCC § 9-204, and sums collected by executrix on accounts and contract rights of decedent were clearly "proceeds" under UCC § 9-306(1). Barnett Bank v. Fletcher, 290 So. 2d 533 (Fla. App. 1974).

Notwithstanding UCC § 9-304(1), which provides that security interest in instruments (checks and money) can only be perfected by taking possession, under UCC § 9-306 properly perfected security interest in collateral continued in proceeds of that collateral, including collections, money and checks being considered cash proceeds, and secured party's interest in cash proceeds continued into bank accounts in which debtor deposited collections in violation of security agreement, subject, however, to bank's rights as holder in due course. Commercial Disct. Corp. v. Milwaukee W. Bank, 61 Wis. 2d 671, 214 N.W.2d 33 (1974).

Since creditor's security interest included "proceeds" from collateral pledged as security, its interest attached to checks received by debtor from sale of debtor's business. Standard Acceptance Co. v. United States, 342 F. Supp. 45 (N.D. Ill. 1972).

22. —Commingled proceeds.

Where (1) bank had perfected security interest in original debtor corporation's inventory, fixtures, and equipment, including after-acquired property, which was superior to lien later obtained by junior lienor under promissory note secured by same collateral, (2) original debtor corporation defaulted on notes given to bank (senior lienor) and to junior lienor, (3) junior lienor without informing bank took over assets of original debtor corporation, transferred them to newly formed corporation, began selling the original inventory which had become commingled with new inventory, and, with respect to original debtor corporation's assets, filed foreclosure complaint against bank and former owners of original debtor corporation alleging that he had taken possession of original debtor corporation's property, subject to bank's security interest, and was seeking to discharge obligation owed to bank in order to become owner of such property, and (4) bank filed complaint in replevin and took possession of collateral, trial court's judgment in favor of bank-which held that bank's security interest was at all times paramount to junior lienor's lien, that after-acquired property clause in bank's security agreement with original debtor corporation covered items that junior lienor had added in his operation of business under new corporation, and that bank should sell collateral, satisfy its own security interest from sale proceeds, and give remaining proceeds to junior lienor-was affirmed because (1) bank's after-acquired property clause effectively covered inventory and proceeds of both original debtor corporation and new corporation, (2) bank's security interest continued in collateral, including after-acquired property, under UCC § 9-306(2) and § 9-311, which must be read together, and (3) since junior lienor, on default of original debtor corporation, did not proceed in accordance with UCC § 9-505(2) in attempting to retain collateral, disposition of collateral ordered by trial court was proper. American Heritage Bank & Trust Co. v. O. & E., Inc., 40 Colo. App. 306, 576 P.2d 566 (1978).

Where security agreement providing that creditor would have security interest in inventory of retailer and in proceeds of sale of each item of inventory did not impose duty upon retailer to pay over to creditor specific proceeds of sale of each item covered by agreement, but merely provided that upon sale or other disposition of any item of inventory, retailer was obligated to immediately pay amounts due to creditor, there was no specific fund from which payment had to be made, and thus corporate officer's commingling of proceeds of sales with other funds was not conversion of proceeds. Independence Disct. Corp. v. Bressner, 47 A.D.2d 756 (2d Dep't 1975).

Where bank held security interest in mobile home dealer's inventory and proceeds from sales thereof, where debtor commingled proceeds of sale from home in its corporate checking account, and where judgment creditor of debtor levied execution on bank account, under UCC § 9-306(1), secured party's security interest in mobile home continued in proceeds of sale of home, and secured party was entitled to trace proceeds subject to security interest into debtor's bank account. Michigan Nat'l Bank v. Flowers Mobile Homes Sales, Inc., 26 N.C. App. 690, 217 S.E.2d 108 (1975).

Tobacco supplier that retained continuing security interest in all of tobacco dealer's current and future inventory of supplier's products, accounts receivable arising from sale of such products and all products and proceeds of foregoing, did not lose its security interest in proceeds from sale of its products by permitting such proceeds to be commingled with other funds in wholesaler's corporate bank account; hence, supplier was entitled to recover such proceeds from bank where bank transferred such funds from wholesaler's account to itself outside ordinary course of business. Brown & Williamson Tobacco Corp. v. First Nat'l Bank, 504 F.2d 998 (7th Cir. Ill. 1974).

Mere fact that proceeds from sales of 6 secured automobiles were commingled with other funds and subsequent withdrawals were made from commingled account would not render proceeds unidentifiable under Missouri law. Universal C.I.T. Credit Corp. v. Farmers Bank, 358 F. Supp. 317 (E.D. Mo. 1973).

C. Perfection as to Proceeds.

23. In general; sufficiency of original filing.

Where debtor was corporation that operated retail clothing store, where secured party acquired perfected purchase money security interest in debtor's inventory including its proceeds and after-acquired property, where debtor corporation merged with other corporations, each operating retail clothing outlets, and, finally, where surviving corporation entered into assignment for benefit of creditors: (1) secured party had valid security interest in after-acquired inventory of debtor, notwithstanding that at time of assignment for benefit of creditors surviving corporation did not have in its possession any inventory purchased from secured party by surviving corporation for any of its constituent corporations; (2) after-acquired property clause extended to property acquired by surviving corporation after merger; and (3) financing statement on file at time of assignment for benefit of creditors was not deficient though it did not contain name of debtor-assignor. However, secured party did not have security interest in the proceeds of inventory from other stores not covered by security agreement. Inter Mt. Ass'n of Credit Men v. Villager, Inc., 527 P.2d 664 (Utah 1974).

A bank which had filed its financing statement with the New Jersey Secretary of State had perfected its security interest in five items of self-propelled earth moving equipment, although it had not filed a financing statement with the Director of Division of Motor Vehicles, an act required by state statute as a condition precedent to the perfection of a security interest in "motor vehicles" (a term defined in the statute to include self-propelled earth moving equipment), the court holding that despite the statutory definition, the term "motor vehicle" was not intended to embrace machinery which normally operates at construction sites even though literally it perhaps can be used to transport persons on a highway. In re Ferro Contracting Co., 380 F.2d 116 (3d Cir. N.J. 1967), cert. denied, 389 U.S. 974, 88 S. Ct. 475, 19 L. Ed. 2d 466 (1967).

24. —Notation on certificate of title.

Where (1) bank on December 30, 1974 made loan to debtor to purchase Chevrolet truck, took purchase-money security interest in truck to secure loan, and security agreement executed by debtor on December 30, 1974 covered collateral's proceeds, (2) debtor traded in Chevrolet truck for Ford truck and received title to Ford truck on June 30, 1975, (3) United States seized Ford truck on July 7, 1975 for debtor's delinquent taxes, (4) debtor, on July 8, 1975, executed agreement with bank substituting Ford truck as collateral for loan, but bank's first security interest was not noted on Ford truck's certificate of title until July 28, 1975, (5) United States sold Ford truck on July 29, 1975 for debtor's delinquent taxes, and (6) under Iowa law, perfection with respect to noninventory vehicle, such as truck in suit, could only occur by noting security interest on vehicle's certificate of title, tax lien of United States had priority over bank's lien under UCC § 9-306(3)(c) because, even assuming that date on which debtor received Ford truck was June 30, 1975, bank clearly had not perfected its security interest in such truck, which was "proceeds" of original collateral (Chevrolet truck), by expiration of ten-day period specified in UCC § 9-306(3)(c) (that is, by July 10, 1975). Security Sav. Bank v. United States, 440 F. Supp. 444 (S.D. Iowa 1977).

Although a bank which had noted its security interest on a DX title to an automobile lost its lien upon the vehicle when it was sold by a dealer in the ordinary course of business, it retained a security interest in the proceeds of the sale under the provisions of subsec. (2). Associates Disct. Corp. v. Old Freeport Bank, 421 Pa. 609, 220 A.2d 621 (1966).

A creditor with a perfected security interest in a truck was entitled to either the truck or the proceeds thereof under this section, where the creditor, who had the security interest of a seller under an installment sale contract, had perfected its security interest by noting the encumbrance on the certificate of title to the truck. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

25. Temporary interests.

Where bank had perfected security interest in debtor's personal property, debtor sold secured property and on same date, judgment creditor levied on sale proceeds, UCC § 9-306(3) provided for continued perfection in proceeds for period of 10 days after sale which defeated judgment lien arising during that period, even though bank allowed perfected security interest to lapse by failing to perfect within 10 day period. Blair Milling &

Elevator Co. v. Wehrkamp, 217 Kan. 122, 535 P.2d 457 (1975).

26. Appropriate steps as to proceeds.

Where (1) automobile dealer obtained Small Business Administration loan from plaintiff bank and executed security agreement in bank's favor covering dealer's shop equipment, furniture, fixtures, accounts receivable, and inventory, except new cars, (2) bank filed financing statement on November 26, 1974 in county chancery clerk's office but not with office of secretary of state, (3) dealer on February 20, 1975 granted security interest in same collateral to defendant credit corporation to cover dealer's indebtness for new cars, and such security interest was properly perfected, (4) at time defendant's branch manager removed collateral from dealer's premises, dealer informed him that collateral was subject to bank's security interest, and (5) branch manager did not check records in county chancery clerk's office to determine whether bank's financing statement covering such collateral had been filed, court held that information given by dealer to defendant's branch manager constituted knowledge of contents of bank's financing statement within meaning of UCC § 9-401(2), so as to perfect bank's security interest in collateral and render it superior to that of defendant. Chrysler Credit Corp. v. Bank of Wiggins, 358 So. 2d 714 (Miss. 1978).

Ten-day grace period as to proceeds specified by UCC § 9-306(3)(c) merely allows previous creditor time to reperfect his secured interest and assure his priority over other creditors of the debtor. The statute does not mean that other creditors cannot file a lien on the debtor's "proceed collateral" during that period. Security Sav. Bank v. United States, 440 F. Supp. 444 (S.D. Iowa 1977).

27. —Filing.

Lien creditor's claim to proceeds of notes, which were pledged to secured party, took precedence over secured party's claim to such proceeds where financing statement covering such proceeds was filed in wrong place. Meadows v. Bierschwale, 516 S.W.2d 125 (Tex. 1974).

Claim of A was entitled to priority over claim of B because, before B took judgment against C, A had perfected its security interest in that crop in accordance with UCC provision relating to filing of "financing statement" covering proceeds of that crop. West Coast Beet Seed Co. v. Polk County Farmers Coop., 261 Or. 381, 494 P.2d 880 (1972).

Creditor properly filed financing statement covering inventory and proceeds; held, this was sufficient to put everyone on notice that creditor's claim extended to proceeds, including accounts resulting from sale of inventory on credit. Matthews v. Arctic Tire, Inc., 106 R.I. 691, 262 A.2d 831 (1970).

D. Insolvency Proceedings.

28. In general.

In bankruptcy proceeding, meat packer's finance agency which had perfected security interest in packer's assets had priority over cash sellers of cattle as to proceeds of sale of meat from cattle in packer's possession. Stowers v. Mahon, 526 F.2d 1238 (5th Cir. Tex. 1976), cert. denied, 429 U.S. 834, 97 S. Ct. 98, 50 L. Ed. 2d 99 (1976).

Where security agreement expressly provided that filing of petition in bankruptcy was event constituting default, holder of security interest had right upon default to take control of all proceeds of collateral under UCC §§ 9-306 and 9-501 et seq., including right to receive and retain all subsequent lease payments. Feldman v. Philadelphia Nat'l Bank, 408 F. Supp. 24 (E.D. Pa. 1976).

The limiting provisions of UCC § 9-306(4)(d)(i) and (ii) are intended to serve as tracing rules for a secured party asserting an interest in proceeds only when the proceeds are brought within the debtor's estate in an insolvency proceeding. The limitations have no operation outside the area of insolvency proceedings. Citizens Nat'l Bank v. Mid-States Dev. Co., 177 Ind. App. 548, 380 N.E.2d 1243, 3 A.L.R.4th 987 (1978).

29. Identifiable proceeds; non-cash.

Where security agreement expressly provided that filing of petition in bankruptcy was event constituting default, holder of security interest had right upon default to take control of all proceeds of collateral under UCC §§ 9-306 and 9-501 et seq., including right to receive and retain all subsequent lease payments. Feldman v. Philadelphia Nat'l Bank, 408 F. Supp. 24 (E.D. Pa. 1976).

30. —Separate deposit account.

In dispute over funds in segregated bank account into which bankrupt debtor deposited cash proceeds from after acquired inventory accounts receivable, contract rights, and general intangibles relating to production and sale of microwave ovens, secured creditor prevailed over judgment creditor where security agreement was effective between parties and against creditors under UCC § 9-201 and moneys in account constituted identifiable noncommingled cash proceeds under UCC § 9-306(4). Salzer v. Victor Lynn Corp., 114 N.H. 29, 315 A.2d 185 (1974).

31. —Cash proceeds.

In action between home appliance dealer's trustee in bankruptcy and secured creditor, UCC § 9-306(4) provision allowing debtor to pay secured creditor from comingled funds during 10 days before bankruptcy to extent that debtor has received cash proceeds within that period was not extended to benefit secured creditor who had persuaded failing business to remit almost 10 times amount of current proceeds from secured collateral to detriment of other secured creditors who were paid nothing; secured creditor's interest in amount not greater than amount of "any cash proceeds" under UCC § 9-306(4)(d)(ii) was limited to cash proceeds from sale of collateral in which creditor had security interest. Fitzpatrick v. Philco Fin. Corp., 491 F.2d 1288 (7th Cir. Ill. 1974).

In dispute over funds in segregated bank account into which bankrupt debtor deposited cash proceeds from after acquired inventory accounts receivable, contract rights, and general intangibles relating to production and sale of microwave ovens, secured creditor prevailed over judgment creditor where security agreement was effective between parties and against creditors under UCC § 9-201 and moneys in account constituted identifiable noncommingled cash proceeds under UCC § 9-306(4). Salzer v. Victor Lynn Corp., 114 N.H. 29, 315 A.2d 185 (1974).

32. Commingled proceeds.

The limiting provisions of UCC § 9-306(4)(d)(i) and (ii) are intended to serve as tracing rules for a secured party asserting an interest in proceeds only when the proceeds are brought within the debtor's estate in an insolvency proceeding. The limitations have no operation outside the area of insolvency proceedings. Citizens Nat'l Bank v. Mid-States Dev. Co., 177 Ind. App. 548, 380 N.E.2d 1243, 3 A.L.R.4th 987 (1978).

Where bank held security interest in mobile home dealer's inventory and proceeds from sales thereof, where debtor commingled proceeds of sale from home in its corporate checking account, and where judgment creditor of debtor levied execution on bank account, under UCC § 9-306(1), secured party's security interest in mobile home continued in proceeds of sale of home, and secured party was entitled to trace proceeds subject to security interest into debtor's bank account. Michigan Nat'l Bank v. Flowers Mobile Homes Sales, Inc., 26 N.C. App. 690, 217 S.E.2d 108 (1975).

33. —Setoff.

A security interest in money (either originally given or received as proceeds from the negotiation of an instrument) is perfected by possession, and a deposit made by lessee with lessor to secure performance of leases could be set off against lessor's claim against bankrupt lessee. In re Atlanta Times, Inc., 259 F. Supp. 820 (N.D. Ga. 1966), aff'd, 383 F.2d 606 (5th Cir. Ga. 1967).

34. —Computing amount recoverable.

In action between home appliance dealer's trustee in bankruptcy and secured creditor, UCC § 9-306(4) provision allowing debtor to pay secured creditor from comingled funds during 10 days before bankruptcy to extent that debtor has received cash proceeds within that period was not extended to benefit secured creditor who had persuaded failing business to remit almost 10 times amount of current proceeds from secured collateral to detriment of other secured creditors who were paid nothing; secured creditor's interest in amount not greater than amount of "any cash proceeds" under UCC § 9-306(4)(d)(ii) was limited to cash proceeds from sale of collateral in which creditor had security interest. Fitzpatrick v. Philco Fin. Corp., 491 F.2d 1288 (7th Cir. Ill. 1974).

E. Rights as to Returned or Repossessed Goods.

35. In general.

Where auto has been returned to or repossessed by seller who had assigned security interest therein, it is necessary for secured party (assignee) to reperfect security interest for protection against purchasers or creditors of seller-assignor under new Ohio provision, not in Official UCC, dealing with goods that have been repossessed or returned to dealer by purchaser. Osborn v. First Nat'l Bank, 472 P.2d 440 (Okla. 1970).

RESEARCH REFERENCES

ALR. Rights in proceeds of vehicle collision policy, under "loss-payable" clause, of conditional seller, chattel mortgagee, or the like, of vehicle where there has been improper repossession or foreclosure after damage. 46 A.L.R.2d 992.

What constitutes secured party's authorization to transfer collateral free of lien under UCC § 9-306(2). 37 A.L.R.4th 787.

Secured transactions: government agricultural program payments as "proceeds" of agricultural products under UCC § 9-306. 79 A.L.R.4th 903.

What constitutes lack of "adequate protection" of interest in property of estate for which relief may be granted from automatic stay provision of Bankruptcy Code of 1978 (11 USCS § 362(a)). 66 A.L.R. Fed. 505.

Determining amount of payments to secured creditor who is to receive, in installments, present value of property under Chapter 13 cram-down provision (11 USCS § 1325(a)(5)(B)) of Bankruptcy Code of 1978. 68 A.L.R. Fed. 537.

Am Jur. 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:361-9:367 (proceeds; rights on disposition of collateral).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2039 through 253:2042 ("proceeds"; secured party's rights on disposition of collateral).

CJS. 79 C.J.S., Secured Transactions § 118 et seq.

72 C.J.S., Pledges §§ 32, 33.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-316. Effect of change in governing law.

(a) A security interest perfected pursuant to the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four (4) months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one (1) jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 75-9-311(b) or 75-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four (4) months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four (4) months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) is effective

to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.

(2) If a security interest that is perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four (4) months after, the new debtor becomes bound under Section 75-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SOURCES: Former 1972 Code § 75-9-316 [Codes, 1942, § 41A:9-316; Laws, 1966, ch. 316, § 9-316, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-339 by Laws, 2001, ch. 495, § 1. Present § 75-9-316 was derived from former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 7, eff from and after July 1, 2013.

Cross References — Priority of certain liens arising from operation of law. See § 75-9-333.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

A. In General.

6. Generally.
7. Controlling law.
8. —Conflict of laws.
9. —Agreement of parties.
10. Perfection.
11. —Filing in debtor's principal place of business.
12. Security interest in accounts and contract rights.
13. Miscellaneous.

B. Mobile Goods.

14. Generally.
15. Incoming goods subject to security interest.
16. Four month rule.
17. —Priority.
18. —Lapse of perfection.
19. —Particular examples.
20. Thirty day rule.
21. Movement of property covered by certificate of title.
22. —Title to nontitle state.
23. —Nontitle to title state.
24. —Between title states.
25. —Between nontitle states.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103.

A. In General.

6. Generally.

This section deals with accounts, contract rights and equipment relating to another state, and incoming goods already subject to a security interest. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

The institution of distraint proceedings obviously does not fall within the intendment of this section. Herman v. Osgood, 103 Pitts. Legal J. 231 (Pa. 1955).

7. Controlling law.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

In debtor's action to enjoin creditor from enforcing two security agreements against collateral therefor, where evidence showed (1) that debtor and creditor had entered into such security agreements and that one of them had been perfected in several states, including New Jersey, (2) that second security agreement had in no way diminished validity of first security agreement, (3) that debtor's reason for seeking injunction against enforcement of such security agreements was creditor's alleged oral agreement to refrain from foreclosing on any debts due it in order to allow debtor to attain a healthy operating condition, (4) that creditor, after concluding that debtor could not attain a healthy operating condition, formally declared debtor to be in default under such security agreements and to owe creditor over $27 million in principal debt and (5) that creditor had then accelerated maturity of all of debtor's term obligations and demanded payment of all principal and interest on debtor's demand obligations, court held (1) that debtor's claim of alleged oral agreement to refrain from foreclosure was unsupported by the evidence, (2) that under (a) UCC § 1-105(1), dealing with power of parties to choose law applicable to their transactions, (b) UCC § 9-102(1), which intends that substantive law of place where collateral is located governs without regard to possible contracts in other jurisdictions, and (c) UCC § 9-103, which lays down numerous choice-of-law rules regarding creation, perfection, and priorities in multistate security-agreement transactions, law of New Jersey governed security agreements in suit, (3) that security interests created by security agreements in suit were valid, (4) that debtor had failed to show any reason for granting injunctive relief against their enforcement and (5) that on debtor's default, creditor under UCC § 9-501(1), as adopted in New Jersey, had right to reduce its claim to judgment and to foreclose on the collateral. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (applying New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Recognition of the title certificate issued in the state of origin and perfection of the security interest noted thereon can continue only as long as the title certificate of the state of origin is the only certificate. Once a new certificate is issued in a second state, it becomes, under UCC § 9-103(4), "the jurisdiction which issued the certificate," and its law governs the perfection of a security interest. The underlying rationale of UCC § 9-103(4) is that there shall be only one title certificate for an automobile, which is that originally issued if it is still in existence. However, once a second certificate of title has been issued by a second state, it is the law of the second state which determines whether a perfected security interest exists in the vehicle, and the creditor must comply with the law of the second state in order to perfect his security interest. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

The exclusiveness of the Vehicle Code registration and transfer requirements for perfection of security interests in automobiles is provided for under the Uniform Commercial Code § 9103(4). Morris Plan Co. v. Moody, 266 Cal. App. 2d 28 (4th Dist. 1968).

In a case where the issue was to whether plaintiff had been guilty of a breach of contract in making instalment payments on the purchase of an airplane so as to give the seller a right to repossess the plane, the question as to whether Massachusetts law applied to the transaction was to be determined under subsection (1) of § 1-105 of the instant chapter and not under subsection (2) of said section and the reference therein to §§ 9-102 and 9-103 applicable to secured transactions because the issues in such case involved the duties of the parties under the primary obligation, and because the validity or perfection of the security interest were not involved. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

In a case where the issue is as to whether a buyer was in default under a contract of sale so as to give the seller a right to repossess the article sold, and where there is no issue as to the validity or perfection of a security interest, the question as to which law is to be applied to the transaction is governed by § 1-105(1) of the instant chapter and not by subsection (2) of the instant section. Skinner v. Tober Foreign Motors, Inc., 345 Mass. 429, 187 N.E.2d 669 (1963).

8. —Conflict of laws.

UCC § 9-102(1) intends that the substantive law of the place where the collateral is located governs without regard to possible contracts in other jurisdictions (see UCC § 9-102, Official Comment 3, and UCC § 9-103, Official Comment 1). However, the general situs rule of UCC § 9-102(1) is not without its exceptions, as is noted by the specific reference in UCC § 9-102(1) to § 9-103. Section 9-103, in turn, although it is not definitive for all multistate transactions, does lay down a great number of specific choice-of-law rules regarding creation, perfection, and priorities in multistate transactions. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Under UCC § 1-105(1), the parties are free to choose the law that they wish to govern the transaction. However, the provisions of Article 9 of the Uniform Commercial Code contain several conflict-of-law rules. Among these rules are transactions to which UCC §§ 9-102(1) and 9-103 apply. In these circumstances, regardless of UCC § 1-105(1), the law governing the transaction will be the mandatory provisions that are stated in UCC §§ 9-102(1) and 9-103. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978) (construing New Jersey law).

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Large earth-moving trucks unquestionably belong in classification of "road building equipment", "construction machinery", "automotive equipment", or all these classifications; held, where it is conceded that debtor has chief place of business in Colorado, law of that state, including law on conflicts, must govern with respect to conflicting claims to trucks taken as trade-in by dealer in connection with sale of other construction equipment to buyer in good faith. GECC v. R.A. Heintz Constr. Co., 302 F. Supp. 958 (D. Or. 1969) (applying Colorado law).

If chief place of business of debtor is not in this state, law, including conflict-of-law rules, of jurisdiction where such chief place of business is located governs perfection of security interest and possibility and effect of proper filing with regard to construction machinery. GECC v. Western Crane & Rigging Co., 184 Neb. 212, 166 N.W.2d 409 (1969).

By adopting Illinois law, contract adopted Illinois conflicts rule of law, so that validity of security interest in goods under contract was to be determined by Indiana law, where goods were taken into Indiana within 30 days of attachment of security interest and where parties understood that property would be kept in Indiana. In re Kokomo Times Publishing & Printing Corp., 301 F. Supp. 529 (S.D. Ind. 1968).

Where it had not adopted the Uniform Trust Receipts Act, the State of Georgia would not be bound to accept the procedural aspects of the Tennessee Act relative to recordation. Chattanooga Disct. Corp. v. West, 219 F. Supp. 140 (N.D. Ala. 1963) (applying Georgia law).

9. —Agreement of parties.

While as between themselves the parties to a security interest transaction may lawfully agree as to the governing law, where the rights of third party creditors in the property of one of the parties are in question, the law of the state of the domicil or place of business of the contracting party in question is controlling. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

10. Perfection.

Where (1) automobile was purchased in Illinois on November 11, 1971, and purchase-money security interest attached on that date in favor of plaintiff or his assignor, (2) original purchaser on November 12, 1971 sold such automobile in Alabama and gave buyer bill of sale therefor, (3) Illinois seller, on November 18, 1971, filed application for certificate of title, listing thereon plaintiff's security interest, (4) Illinois certificate of title was issued on November 30, 1971, and showed plaintiff's lien dated November 11, 1971, and (5) automobile was resold in Alabama to defendants on December 8, 1971, Alabama court would reject, in light of express provisions of UCC § 9-302(3) and (4), defendants' contention that Alabama UCC § 9-103(4) did not apply to case because Illinois certificate-of-title law did not require indication on certificate of title of any security interest in the property as a condition of perfection, since so to do would require too narrow an interpretation of phrase "condition of perfection" contained in Alabama UCC § 9-103(4). Instead, court would hold that it was sufficient for purposes of Alabama UCC § 9-103(4) if law of another state, such as Illinois in present case, required that all certificates of title have indicated thereon any security interests in the property, regardless of whether such indication was "condition of perfection" or whether state official was under statutory duty to indicate security interests before issuing certificate of title. Lightfoot v. Harris Trust & Sav. Bank, 357 So. 2d 654 (Ala. 1978) (Also rejecting defendants' content on that Alabama UCC § 9-103(4) was inapplicable because Illinois certificate of title had not been issued when vehicle entered Alabama, since such interpretation would nullify "relation-back" features of Illinois certificate-of-title law).

Secured party who had perfected security interest on property in South Dakota, but who did not file and perfect his interest in Iowa within four-month period after goods were transported to Iowa, had junior interest to buyer for value who purchased goods within four-month period, but who had no knowledge or notice of security interest, after lapse of four months without perfection of security interest in Iowa. United States v. Squires, 378 F. Supp. 798 (S.D. Iowa 1974) (citing annotation; applying Iowa law).

Plaintiff had properly filed security agreement perfecting security interest; defendant later perfected security interest by taking possession pursuant to agreement giving defendant right to use machine at issue until completion of work; held, plaintiff was entitled to machine when purchaser filed petition for arrangement under Bankruptcy Act while machine was in defendant's possession. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970) (applying New Jersey law).

When the holder of a security interest perfects the same, subsequent purchasers and encumbrancers are charged with notice of such perfected interest. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

11. —Filing in debtor's principal place of business.

In conversion action to determine priority of security interests in bulldozer and right to proceeds from its sale, where (1) bulldozer was sold in Michigan to Michigan buyer which gave seller an Indiana address, (2) buyer at time of sale was authorized to do business in Indiana and was mainly engaged in developing Indiana property, (3) seller assigned its security agreement listing bulldozer as collateral to plaintiff, and plaintiff filed financing statement with Indiana secretary of state, (4) defendant thereafter obtained security interest in bulldozer under security agreement with buyer, who listed it as collateral for loan from defendant, and filed financing statement with Michigan secretary of state, and (5) plaintiff then filed financing statement in Michigan after defendant's filing, court held (1) that Indiana was buyer's "chief place of business" under UCC § 9-103(2), (2) that Indiana therefore was proper place to file financing statement to perfect security interest in bulldozer, and (3) that since only plaintiff had perfected its security interest in Indiana, judgment was properly entered in plaintiff's favor. Associates Fin. Servs. Co. v. First Nat'l Bank, 82 Mich. App. 495, 266 N.W.2d 490 (1978).

In appeal by secured party from order of trustee in bankruptcy, Kansas was debtors' "chief place of business" under UCC § 9-103(2) where debtors at all times resided and conducted their business affairs there, where truck was garaged there when not in interstate travel, and where only connection with Oklahoma was fact that lessee of truck had its home office there; although secured party was not required to force purchasers to register used truck in Kansas under UCC § 9-302(4), where Kansas certificate of title was not obtained and truck was instead registered in Oklahoma, secured party was in same position as if truck had never been certificated in Kansas and filing of financing statement in Oklahoma, without filing security agreement in Kansas, was insufficient to entitle secured party to reclaim sales proceeds of truck. In re Dobbins, 371 F. Supp. 141 (D. Kan. 1973) (applying Kansas law).

The mobility of tractors, normally used in more than one jurisdiction, makes filing in debtor's principal place of business necessary under UCC § 9-103(2) in order to perfect security interest therein, and bank which had not so filed could not prevail over tractor buyer's judgment creditor who levied against tractors in possession of buyer. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Where New Jersey was chief place of business of debtor which had entered into security agreement as to traxcavator, a heavy construction machine, rights of parties were governed by New Jersey law. Foley Mach. Co. v. John T. Brady Co., 62 Misc. 2d 777 (1970).

12. Security interest in accounts and contract rights.

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

13. Miscellaneous.

Since Illinois vehicle code provided exclusive means of perfecting and giving notice of security interest in motor vehicles, failure of Illinois seller of used automobile to note bank's lien on vehicle's certificate of title resulted in failure of bank's security interest to come into existence, thereby rendering inappropriate seller's references to Illinois Uniform Commercial Code in seller's action to replevy vehicle. Huber Pontiac, Inc. v. Wells, 59 Ill. App. 3d 14, 375 N.E.2d 149 (4th Dist. 1978).

Transaction between contractor and surety for completion of public improvement project following contractor's default was not intended to have effect as security. Aetna Cas. & Sur. Co. v. Perrotta, 62 Misc. 2d 252 (1970).

The lien of a common carrier for the cost of transporting a house trailer from Virginia to Oklahoma was subordinate to a prior security interest perfected in Virginia of which the carrier was charged with notice. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

B. Mobile Goods.

14. Generally.

Industrial equipment may not be characterized as mobile goods within meaning of Code § 9-103(2). In re Dennis Mitchell Indus., Inc., 419 F.2d 349 (3d Cir. Pa. 1969) (applying Pennsylvania law).

15. Incoming goods subject to security interest.

A security interest in a house trailer perfected in Virginia before the trailer was moved to Oklahoma was effective in the latter state under subsec. (3). National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

An assignee of a conditional sales agreement made in New York is protected as against a purchaser of the security in Pennsylvania for a period of four months provided that the security interest was perfected in New York before the security was brought into Pennsylvania. Casterline v. GMAC, 195 Pa. Super. 344, 171 A.2d 813 (1961).

16. Four month rule.

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Where (1) Pennsylvania seller sold boat to Pennsylvania buyer and delivered it to buyer in Maryland, (2) secured party, which had financed purchase of boat by conditional sales contract, perfected its security interest in boat by filing financing statement in Pennsylvania (3) buyer resold boat to third person in Maryland, (4) seller, as representative of secured party, thereafter came to Maryland, took possession of boat, and returned it to seller's premises in Pennsylvania, and (5) second buyer brought replevin action to recover possession of boat, court held (1) that under UCC § 9-103(3), secured party's security interest in boat, which had been perfected under Pennsylvania law, was also perfected for four months under Maryland law, (2) that after such four-month period had run, secured party's failure to file financing statement in Maryland caused its security interest to become unperfected, and (3) that under UCC § 9-301(1)(c), such unperfected interest was subordinate to rights of second buyer, who was buyer not in ordinary course of business who gave value and received delivery of the collateral without knowledge of security interest therein and before such interest was reperfected in

Maryland. Wind v. Westinghouse Credit Corp., 260 Pa. Super. 385, 394 A.2d 980 (1978).

The majority of courts which have considered the question have concluded that UCC § 9-103(4) does not apply to all security interests, but only to those which attach after the certificate of title is issued. It may be argued that the statute, as thus interpreted, permits a person in possession of personal property to defraud an innocent purchaser. But it must be kept in mind that the legislature, in adopting the Uniform Commercial Code, sought to strike a balance between the interests of the prior lienholder and those of a subsequent, good-faith purchaser or creditor. In order to afford some protection to the party with the prior interest, he is given, under UCC § 9-103(3), a period of four months in which to perfect his interest in this state. After that, his priority is lost until he perfects the interest. If this protection is given, a prospective purchaser or creditor has the burden of making sure that the property has been located in this state for more than four months. Associates Realty Credit, Ltd. v. Brune, 89 Wash. 2d 6, 568 P.2d 787 (1977).

One who takes title to incoming auto subject to security interest of assignee of conditional vendor during four months from time auto entered jurisdiction cannot prevail over assignee under UCC § 9-103(3). Newton-Waltham Bank & Trust Co. v. Bergen Motors, Inc., 68 Misc. 2d 228 (1971), aff'd, 75 Misc. 2d 103, 347 N.Y.S.2d 568 (1972).

17. —Priority.

Lien created in Massachusetts enjoyed superiority in New York for period of 4 months from date auto arrived in New York without any further measures being undertaken by conditional vendor's assignee, who sought to recover from New York purchaser, to localize such foreign security interest. Newton-Waltham Bank & Trust Co. v. Bergen Motors, Inc., 68 Misc. 2d 228 (1971), aff'd, 75 Misc. 2d 103, 347 N.Y.S.2d 568 (1972).

Where cattle here in question were transported from Utah to Wyoming within 4 months of their delivery to debtor, under Wyoming Code, creditor's security interest perfected under laws of Utah is superior to any rights of innocent purchasers. Utah Farm Prod. Credit Ass'n v. Dinner, 302 F. Supp. 897 (D. Colo. 1969) (applying Wyoming law).

18. —Lapse of perfection.

Where holder of security interest in automobile which was perfected under Texas law did not reperfect its security interest within four-month period after automobile was brought into Arizona, interests of persons who purchased automobile during that four-month period were not subject to such security interest. Arrow Ford, Inc. v. Western Landscape Constr. Co., 23 Ariz. App. 281, 532 P.2d 553 (1975).

Goods having been removed directly to New Jersey, failure to file financing statement in that state clearly renders security interest unperfected at end of four months even if court considered security interest to have been originally perfected in Pennsylvania; held, four months' period begins to run whether or not secured party has notice that collateral has been removed to another jurisdiction. In re Dennis Mitchell Indus., Inc., 419 F.2d 349 (3d Cir. Pa. 1969) (applting New York law).

19. —Particular examples.

Where (1) plaintiff Farmers Home Administration made loan to Mississippi farmer and properly perfected security interest in Mississippi in all of farmer's livestock, (2) farmer, without knowledge or approval of plaintiff, shipped livestock from Mississippi to Tennessee to be sold, (3) livestock, within four months of their removal to Tennessee, were sold to bona-fide purchasers by defendant livestock broker, (4) farmer did not apply sale proceeds to plaintiff's loan and defaulted on loan payments, and (5) plaintiff took no action to perfect its security interest in Tennessee, court held (1) that Uniform Commercial Code should be adopted as relevant federal common law in Farmers Home Administration security-interest cases; (2) that if there should be lack of uniformity on particular issue, either because of nonuniform changes in UCC itself or because of differing interpretations of a uniform provision, court would ordinarily follow weight of authority; (3) that in present case, since right of plaintiff to recover in conversion against defendant depended on which of two interpretations should be given to four-months protection rule in UCC § 9-103(3), court would adopt interpretation favored by weight of authority, which is that UCC § 9-103(3) gives secured party four months of "absolute protection" in removal state without necessity of any additional filing in removal state at any time; and (4) that since defendant had sold livestock within four months of their removal to Tennessee, judgment would be entered for plaintiff. United States v. Burnette-Carter Co., 575 F.2d 587 (6th Cir. Tenn. 1978), cert. denied, 439 U.S. 996, 99 S. Ct. 596, 58 L. Ed. 2d 669 (1978).

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-301(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978) (applying South Carolina law).

Perfected purchase money security interest from foreign state is not enforceable in Florida unless perfected within four-month period; this is clear legislative intent under UCC § 9-103(3) despite apparent injustice to holder of purchase money security interest who fails to register lien in Florida after motor vehicle is moved thereto. GECC v. Hollywood Bank & Trust Co., 263 So. 2d 593 (Fla. App. 1972).

The innocent purchaser in New Jersey of an automobile subject to a security interest perfected in New York takes the vehicle subject to the rights of an assignee of the original New York conditional vendor where the transaction in New Jersey took place within four months after the conditional vendee had removed the automobile to that state, even though the security interest had not then been perfected in New Jersey, for the four month period provided by subsec. (3) is an absolute period of protection of the vendor's security interest. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

A conditional vendor who fails to perfect his security interest within the four-month period provided by subsec. (3) is no longer protected, and a subsequent purchaser of the property for value and without notice of the security interest would take a superior title. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

20. Thirty day rule.

In bankruptcy proceeding involving conflicting interests in car purchased by debtor in Illinois prior to being declared bankrupt in Georgia, where (1) debtor created security interest in vehicle which holder duly perfected under Illinois statute that required such interest to be perfected by noting it on vehicle's certificate of title; (2) debtor at time of purchase informed secured party that debtor would remove vehicle to Georgia within 30 days for purposes other than transportation and debtor did remove it within such time, but secured party did not take any steps to perfect such security interest in Georgia; (3) debtor's trustee in bankruptcy claimed superior interest in vehicle under provision of Georgia certificate-of-title statute which declared that Georgia law would determine validity of out-of-state security interest in vehicle brought into Georgia if parties understood at time interest was created that vehicle would be kept in Georgia and vehicle was brought into Georgia within 30 days thereafter for purposes other than transportation; (4) secured party claimed superior interest in vehicle under another provision of the Georgia certificate-of-title statute which provided that security interest perfected under law of jurisdiction where vehicle was situated when interest attached would continue perfected in Georgia if name of holder of interest was shown on certificate of title issued by such other jurisdiction; and (5) secured party also contended that in light of Georgia version of UCC § 9-103(3), term "validity of security interest" in statutory provision on which bankruptcy trustee based claim to vehicle in suit was not synonymous with "perfection of security interest," so as to sustain trustee's claim, federal court would certify to Supreme Court of Georgia question whether holder of security interest in vehicle in suit was also required to obtain Georgia certificate of title for such vehicle and to note thereon its security interest in order to protect it against claim of bankruptcy trustee. In re McClintock, 558 F.2d 732 (5th Cir. Ga. 1977), appeal decided, 571 F.2d 317 (5th Cir. Ga. 1978) (certifying question of Georgia law determinative of cause to Supreme Court of Georgia).

21. Movement of property covered by certificate of title.

Where bankrupt, using money borrowed from New York bank, purchased second hand truck in Ohio and acquired clean certificate of title in Ohio, bank's security interest not being noted on title certificate as required by Ohio law, bankrupt registered vehicle in Ohio using title certificate, although bank knew nothing of Ohio registration and title certificate nor of bankrupt's intention to register vehicle there, and although truck was garaged principally in New York, in accordance with UCC § 9-103(4) law of Ohio determined existence of perfected security interest prior to bank's lawful repossession of truck in state of New York and bank, therefore, did not obtain perfected security interest in New York by filing financing statement in New York. In re Osborn, 389 F. Supp. 1137 (N.D.N.Y. 1975) (applying New York law).

Under Virginia UCC, perfection of security interest would be governed by law of jurisdiction which issued certificate of title on mobile home, which in this case was West Virginia. In re Smith, 311 F. Supp. 900 (W.D. Va. 1970), aff'd, 437 F.2d 898 (4th Cir. Va. 1971).

UCC § 9-103(4) unequivocally removes application of UCC § 9-103(3) to any personal property covered by a certificate of title issued under a statute of any state which requires indication on a certificate of title of any security interest as a condition of perfection; in other words, one who has a security interest in personal property, perfected in a state which requires the issuance of a certificate of title on such property and the listing thereon of a security interest as a condition of perfection, does not have to protect such security interest by any further action in a state to which the property may thereafter be removed; this places an undue burden on prospective lienees in Alabama which does not have a registration and title statute; it appears the undue hardship to lenders in Alabama resulting from the effect of UCC § 9-103(4) was created by the legislature and must be removed by it, either by repeal, amendment, or passage of other correctional legislation. Deposit Nat'l Bank v. Chrysler Credit Corp., 48 Ala. App. 161, 263 So. 2d 139 (Civ. App. 1972).

UCC § 9-103(4) relating to perfection of security interests in other states is not repealed by motor vehicle code provision regarding certificate of title to auto, and controls where auto was purchased in Illinois and registered in Ohio, where mortgagee's security interest was noted on Ohio certificate of title, and where owner's judgment creditor knew of foreign registration and that there was some lien, so that mortgagee's security interest under UCC § 9-103(4) was superior to that of creditor. Town House Motel, Inc. v. Ward, 2 Ill. App. 3d 699, 276 N.E.2d 809 (5th Dist. 1971).

Once a security interest (lien) is noted upon a certificate of title in a state which requires such notation for perfection, security interest (lien) remains perfected when vehicle is removed to another state, even if debtor has not obtained new certificate of title in other state. Streule v. Gulf Fin. Corp., 265 A.2d 298 (D.C. 1970).

Where a house trailer was purchased in Virginia and the certificate of title issued by that state showed a bank's conditional sales contract as a lien thereon, it was unnecessary for the security holder to perfect its lien in New York within four months after the trailer was moved there, for subsection (4), rather than subsection (3) was controlling. In re White, 266 F. Supp. 863 (N.D.N.Y. 1967).

22. —Title to nontitle state.

Where bank had perfected security interest in automobile in Oklahoma, driver of car fraudulently obtained Oklahoma certificate of title which indicated there were no liens on vehicle, drove car to Nevada and sold it to defendant on May 15, 1971, trial court erred in dismissing bank's complaint for conversion of car on grounds that bank failed to prove car had been brought into Nevada within four-month period immediately preceding date when driver sold car to defendant, as prescribed by UCC § 9-103(3); evidence showed that driver took possession of automobile in Oklahoma in December, 1970, that he made two payments on vehicle which were mailed from Oklahoma, and that he obtained Oklahoma certificate of title in March, 1971, from which it could be inferred that automobile was in Oklahoma as late as March, 1971, within four months of time when defendant purchased it. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

Where Texas bank perfected security interest in automobile located in Texas, a title state, and gave owner permission to take car to New York, a nontitle state, and license it there, with understanding that it would not have to relinquish its Texas title, and where owner, after driving car to New York and obtaining clear New York title certificate, drove car to Washington, a title state, obtained clear Washington title and within four months after leaving Texas sold car to Washington purchaser, Texas law governed initial perfection of security interest and, regardless of whether Texas bank perfected its security interest in compliance with Washington law, its security interest continued under UCC § 9-103(3) to be perfected in Washington for first four months after car was brought into state and, thus, upon owner's default, Texas bank could lawfully repossess car from Washington buyer. Morris v. Seattle-First Nat'l Bank, 10 Wash. App. 129, 516 P.2d 1055 (1973).

23. —Nontitle to title state.

Under UCC § 9-103, holder of security interest in automobile, perfected pursuant to laws of Minnesota, a nontitle state, who had no knowledge of its removal to Nebraska, a title state, had priority over Nebraska purchaser without knowledge of such security interest who purchased automobile with clear Nebraska title within 4 months of its arrival in Nebraska; UCC § 9-103, Official Comment 7, makes it clear that subsection (4) does not apply to automobile which was sold under conditional sales contract in state which does not require indication on certificate of title of any security interest in property as condition of perfection, and which was subsequently brought into state which had such requirement; thus, in present case, pursuant to UCC § 9-103(3), question of whether plaintiff had

perfected security interest in automobile when it was brought to Nebraska was governed by Minnesota law. Community Credit Co. v. Gillham, 191 Neb. 198, 214 N.W.2d 384 (1974), overruled on other grounds, Novak v. Nelsen, 209 Neb. 728, 311 N.W.2d 8 (1981).

New Jersey UCC § 9-103(4) should only be applied to goods which, at the time of entry into New Jersey, are covered by a certificate of title. New Jersey UCC § 9-103(3) should apply to all goods which are moved into New Jersey from noncertificate-of-title jurisdictions. If a certificate of title is subsequently acquired, New Jersey UCC § 9-103(3) remains applicable according to its terms. And with respect to professional buyers of goods, the four-month grace period provided in New Jersey UCC § 9-103(3) is absolute, and bona-fide status is no protection. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978).

In action to foreclose chattel mortgage on mobile home that was assigned to plaintiff by party that financed purchase of such home in British Columbia, Canada, where (1) plaintiff's security interest in such home was perfected by filing under British Columbia law, which did not issue certificates of title to mobile homes; (2) purchasers breached chattel mortgage's provisions by taking home from British Columbia into state of Washington without consent of plaintiff chattel-mortgage holder and secured Washington certificate of title to such home by falsely representing that they owned it free of any lien or security interest therein; and (3) purchasers on basis of such certificate of title obtained loan from Washington lender and lender perfected security interest in home in accordance with Washington law, court would hold under UCC § 9-103(3) and (4), and also Washington statute dealing with perfection and loss of security interest where vehicle subject to interest had certificate of title, that as between the two holders of a perfected security interest in such home, holder of interest perfected in British Columbia had priority, since UCC § 9-103(4) does not apply to all security interests, but only to those that attached after certificate of title to vehicle was issued. Associates Realty Credit, Ltd. v. Brune, 89 Wash. 2d 6, 568 P.2d 787 (1977) (citing annotation; also holding that the holder of security interest perfected in British Columbia must first exhaust its Canadian security before resorting to proceeds of sale, in state of Washington, of mobile home in suit).

Where security interest of secured party with respect to automobile was duly perfected in Arizona and Texas prior to time debtor brought automobile to Oklahoma and where Oklahoma certificate of title was prepared but not issued in Oklahoma, under UCC § 9-103(4), accomplished perfection in Arizona or Texas would continue in Oklahoma and security interest of secured party was superior to claim of subsequent creditor in Oklahoma. McMillin v. Phoenix Telco Fed. Credit Union, 429 F. Supp. 131 (W.D. Okla. 1976) (applying Oklahoma law).

Subsection (4) does not apply to an automobile which was sold under a conditional sales contract in a state that does not require indication on a certificate of title of any security interest as a condition of perfection, although the automobile was subsequently brought into a state which had such a requirement. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

Under subsection (3) of this section the New York assignee of a conditional sales contract who has filed the contract in accordance with the then existing Uniform Commercial Code had made its reservation of title valid against all persons under New York Law as that state did not require a notation of the seller's interest to appear on the title certificate, and at time the car buyer purported to sell it in Pennsylvania, the assignee held a perfected security interest in the car in that state. Al Maroone Ford, Inc. v. Manheim Auto Auction, Inc., 205 Pa. Super. 154, 208 A.2d 290 (1965).

24. —Between title states.

Where (1) buyer purchased 1974 pickup truck on July 12, 1974, (2) secured party perfected security interest therein under New York law by obtaining certificate of title on which secured party's lien was noted, (3) buyer moved from New York to Oklahoma on June 13, 1975, and applied for and received Oklahoma certificate of title for such truck without surrendering New York certificate of title, which was still in secured party's possession in New York, (4) buyer was adjudicated bankrupt on October 18, 1976, and (5) secured party, as of date of buyer's adjudication of bankruptcy, had not filed any financing statement in Oklahoma reflecting its security interest in truck, court held that bankruptcy judge did not err in holding that notation of secured party's lien on New York certificate of title, which remained outstanding and unsurrendered on buyer's relocation to Oklahoma, was not sufficient to maintain secured party's perfected security interest in truck under UCC § 9-103(4). In such case, UCC § 9-103(3)-providing that previously perfected security interest in property subsequently brought into a second state continues perfected in second state for four months, after which it must be reperfected in second state-applies, and since secured party had never filed financing statement concerning truck in Oklahoma, it had no perfected security interest in truck as of date on which debtor was adjudicated bankrupt. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

Where (1) Canadian creditor, which was assignee of buyer's automobile-purchase contract with Canadian dealer, perfected its lien on vehicle under Canadian law, (2) buyer acquired Canadian certificate of registration which did not require notation thereon of creditor's security interest, (3) buyer drove car to New Jersey, where he changed Canadian registration to New Jersey registration and fraudulently obtained "clean" New Jersey certificate of title which showed no liens on vehicle, (4) buyer within four days after purchasing vehicle sold it to New Jersey used-car dealer, which in turn sold it to one of its customers, and (5) Canadian creditor sued New Jersey dealer for conversion, court would hold, on reinstating trial court's granting of summary judgment for plaintiff, (1) that New Jersey UCC § 9-103(3) and (4) should be interpreted to protect interest of foreign lienholder, (2) that priority of plaintiff's perfected security interest under Canadian law was not defeated by original buyer's fraudulent securing of "clean" New Jersey certificate of title, and (3) that defendant dealer and professional buyer, which in good faith purchased vehicle with "clean" certificate of title, was not entitled to prevail over plaintiff which held valid but undisclosed foreign lien. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978) (noting that New Jersey had not adopted 1972 amendment of UCC § 9-103).

Auto subject to security interest perfected under Oklahoma law was brought into Texas without knowledge or consent of owners or holder of security interest; Texas certificate of title was issued to plaintiff dealer's predecessor in interest; held, dealer took subject to outstanding security interest. Phil Phillips Ford, Inc. v. St. Paul Fire & Marine Ins. Co., 454 S.W.2d 465 (Tex. Civ. App. 1970), aff'd, 465 S.W.2d 933, 42 A.L.R.3d 1158 (Tex. 1971) (superseded by statute as stated in Rutherford v Whataburger, Inc. (CA 5th Dist) 601 SW2d 441).

Truck was not sold in ordinary course of business; buyer had no knowledge of Florida source of origin of truck; buyer inquired of seller and checked proper county offices in New York and found that no liens had been filed against truck; Florida bank held chattel mortgage on truck; bank had permitted seller, who had acquired title in Florida, to register title in New York; both New York and Florida are title states; seller had failed to use proceeds of sale to pay off lien; held, lien of bank was subordinated to buyer's purchase interest. Seely v. First Bank & Trust, 64 Misc. 2d 845 (1970).

25. —Between nontitle states.

Where finance company had perfected security interest in automobile in Oklahoma, a non-title state, car was registered in Alabama, also a non-title state, and then certificate of title was issued in Georgia, a certificate of title state, which showed no security interest, and vehicle was subsequently sold to purchaser in Alabama within four months after vehicle was removed from Oklahoma, finance company's security interest was in full force and effect in Alabama when purchaser bought car and, hence, finance company's claim was superior to that of purchaser. GMAC v. Long-Lewis Hdwe. Co., 54 Ala. App. 188, 306 So. 2d 277 (Civ. App. 1974), cert. denied, 293 Ala. 752, 306 So. 2d 282 (1974).

SUBPART 3.

PRIORITY.

SEC.

75-9-317. Interests that take priority over or take free of security interest or agricultural lien.
75-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.
75-9-319. Rights and title of consignee with respect to creditors and purchasers.
75-9-320. Buyer of goods.
75-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.
75-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.
75-9-323. Future advances.
75-9-324. Priority of purchase-money security interests.
75-9-324A. Priority of production-money security interests and agricultural liens.
75-9-325. Priority of security interests in transferred collateral.
75-9-326. Priority of security interests created by new debtor.
75-9-327. Priority of security interests in deposit account.
75-9-328. Priority of security interests in investment property.
75-9-329. Priority of security interests in letter-of-credit right.
75-9-330. Priority of purchaser of chattel paper or instrument.
75-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8.
75-9-332. Transfer of money; transfer of funds from deposit account.
75-9-333. Priority of certain liens arising by operation of law.
75-9-334. Priority of security interests in fixtures and crops.
75-9-335. Accessions.
75-9-336. Commingled goods.
75-9-337. Priority of security interests in goods covered by certificate of title.
75-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.
75-9-339. Priority subject to subordination.

§ 75-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under Section 75-9-322; and

(2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One (1) of the conditions specified in Section 75-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 75-9-320 and 75-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

SOURCES: Former 1972 Code § 75-9-317 [Codes, 1942, § 41A:9-317; Laws, 1966, ch. 316, § 9-317, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-402 by Laws, 2001, ch. 495, § 1 . Present § 75-9-317 was derived from 1972 Code § 75-2A-307 [Laws, 1994, ch. 445, § 1, eff from and after July 1, 1994] and former 1972 Code § 75-9-301 [Codes, 1942, § 41A:9-301; Laws, 1966, ch. 316, § 9-301; Laws, 1977, ch. 452, § 14; Laws, 1986, ch. 343, § 1; Laws, 1996, ch. 468, § 62, eff from and after July 1, 1996] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 68; Laws, 2013, ch. 451, § 8, eff from and after July 1, 2013.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Perfection of security interests in motor vehicles, see § 63-21-43.

Filing provisions and agricultural liens, see § 75-9-310.

Priorities among conflicting security interests in and agricultural liens on same collateral, see § 75-9-322.

Priority of security interests in fixtures and crops, see § 75-9-334.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-301.

A. Generally.

6. In general.
7. Application.
8. Choice of law.
9. Knowledge of security interest as affecting priority.
10. —Knowledge immaterial.
11. —Lien creditor over judgment creditor with knowledge.
12. —Unperfected security interest over judgment or lien creditor with knowledge.

B. Receivers in Equity and Assignees For Benefit of Creditors.

13. In general.
14. Assignee over unperfected security interest.
15. Miscellaneous.

C. Lien Creditors.

16. In general.
17. Lien creditor and secured party distinguished.
18. Lien creditor over unperfected security interest.
19. —Assignment of accounts, contract rights.
20. —Lease intended as security interest.
21. —Other transactions intended as security interest.
22. Place of filing.
23. —Timely filing.
24. Judgment lien creditor over unperfected security interest.

D. Secured Interests.

25. In general.
26. Perfected security interest over lien creditor.
27. —Assignments.
28. Perfected security interests over unperfected.
29. —Place of filing.
30. —Timely perfection.
31. Perfected security interest over judgment creditor.
32. Unperfected security interests as between parties.
33. Unperfected security interests over other transactions.
34. Unperfected security interests over tax lien.

E. Tax Liens.

35. In general.
36. Tax lien creditor over unperfected security interest.
37. Tax lien creditors versus judgment creditors; timeliness.
38. Tax lien creditors versus perfected security interest; place of filing.

F. Trustee in Bankruptcy.

39. In general.
40. Trustee in bankruptcy over perfected security interest; timely filing.
41. —Perfected security interest over trustee in bankruptcy.
42. Trustee in bankruptcy over unperfected security interest.
43. —Assignment of accounts and contract rights.
44. —Knowledge of security interest by all creditors.
45. —Six month rule.

G. Decisions Under Former Statutes.

46. Decisions under former Code 1942 § 337.
47. Decisions under former Code 1942 § 5080-08.
48. Decisions under former Code 1942 § 5080-09.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-301.

A. Generally.

6. In general.

The provision in § 75-9-301(4) limiting the lien's priority to future advances made within 45 days of perfection of an intervening lien or without actual knowledge of the new lien does not directly reach real estate secured transactions, but does pronounce the public policy in an area on its face indistinguishable in principle from real estate secured transactions. Shutze v. Credithrift of Am., Inc., 607 So. 2d 55 (Miss. 1992).

After a security interest in collateral has been perfected by filing, any buyer not in the ordinary course of business takes subject to the security interest. However, if the security interest has not been perfected, even a buyer not in the ordinary course of business will have priority to the extent he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected (see UCC § 9-301(1)(c)). Thorp Sales Corp. v. Dolese Bros. Co., 453 F. Supp. 196 (W.D. Okla. 1978).

Under UCC § 9-301(1)(c), an unperfected security interest is subordinate to the interest of an innocent buyer who has given value and received delivery of the secured collateral, provided that the buyer is not a buyer in the ordinary course of business. McKenzie v. Oliver, 571 S.W.2d 102 (Ky. Ct. App. 1978).

In action to recover possession of motor home that plaintiff secured party had sold to debtor under retail installment contract and security agreement, where (1) plaintiff, although authorized to file financing statement, did not do so before assigning installment contract and security agreement to bank, (2) after contract and security agreement had been assigned to bank, debtor transferred title to home to third-party purchaser, (3) such purchaser resold home to another third party who, in turn, resold it to defendant, (4) after first third-party purchaser had purchased home, bank filed financing statement that listed only original buyer of home as "debtor," and (5) on original buyer's default in making payments, bank reassigned installment contract and security agreement to plaintiff, which sought to replevy home from last third-party purchaser, court held (1) that even though bank was aware that title to home had been transferred to first third-party purchaser, bank nevertheless, on filing its financing statement, listed only original buyer as "debtor" on such statement, (2) that financing statement, as a result, failed under UCC §§ 9-402(1) and 9-105(1)(d) to identify "debtor" properly in situation where owner of collateral and obligor on financing agreement were not the same person, (3) that plaintiff's security interest was therefore not perfected, and (4) that since defendant third-party purchaser had purchased home out of ordinary course of business and without knowledge of plaintiff's unperfected security interest therein, defendant's ownership of home was free of such security interest under UCC § 9-301(1)(c). White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Under UCC § 9-302(1)(d), a valid financing statement, properly filed, perfects a security interest in a motor vehicle. Until that time, under UCC § 9-301(1)(c), a buyer not in the ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the unperfected security interest, takes free of such interest. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Where (1) Pennsylvania seller sold boat to Pennsylvania buyer and delivered it to buyer in Maryland, (2) secured party, which had financed purchase of boat by conditional sales contract, perfected its security interest in boat by filing financing statement in Pennsylvania (3) buyer resold boat to third person in Maryland, (4) seller, as representative of secured party, thereafter came to Maryland, took possession of boat, and returned it to seller's premises in Pennsylvania, and (5) second buyer brought replevin action to recover possession of boat, court held (1) that under UCC § 9-103(3), secured party's security interest in boat, which had been perfected under Pennsylvania law, was also perfected for four months under Maryland law, (2) that after such four-month period had run, secured party's failure to file financing statement in Maryland caused its security interest to become unperfected, and (3) that under UCC § 9-301(1)(c), such unperfected interest was subordinate to rights of second buyer, who was buyer not in ordinary course of business who gave value and received delivery of the collateral without knowledge of security interest therein and before such interest was reperfected in Maryland. Wind v. Westinghouse Credit Corp., 260 Pa. Super. 385, 394 A.2d 980 (1978).

When reference is made in UCC § 9-301 to "knowledge" it is "actual" knowledge. Bloom v. Hilty, 427 Pa. 463, 234 A.2d 860 (1967).

The instant section only pertains to "security interest." Spurlin v. Sloan, 368 S.W.2d 314 (Ky. 1963).

7. Application.

This Section of the Code relates to secured transactions insofar as third persons are concerned and does not determine the effect of a secured transaction as between the original debtor and the original creditor. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

Issues arising between an assignee for the benefit of creditors and the owner of machinery allegedly leased to the debtor are not controlled by the Uniform Commercial Code, where the lease agreement had been signed prior to the effective date of the Code. In re Merkel, Inc., 46 Misc. 2d 270 (1965).

8. Choice of law.

Contention of allegedly bona fide purchaser of caterpillar tractor, in which plaintiff creditor held unperfected security interest and also lien pursuant to filed writ of attachment, that priority sections of Article 9 of Utah Uniform Commercial Code (see UCC § 9-301 et seq.) should be applied to determine priority of interests in tractor, instead of provisions of Utah Fraudulent Conveyance Act, would not be sustained because adoption of Uniform Commercial Code by Utah legislature was not intended to supersede existing Utah Fraudulent Conveyance Act. Meyer v. General Am. Corp., 569 P.2d 1094 (Utah 1977).

9. Knowledge of security interest as affecting priority.

In action involving seller's petition to reclaim furniture sold to insolvent buyer, where (1) seller sold furniture to buyer which buyer accepted, (2) at time of delivery, seller did not know that buyer was insolvent, (3) two days after learning of buyer's insolvency, seller sent telegram to buyer demanding rescission under UCC § 2-702 and, after receiver was appointed for buyer, filed petition to reclaim goods, (4) bankruptcy court denied petition on ground that bankruptcy trustee was entitled to goods under § 70(c) of Bankruptcy Act and that UCC § 2-702 conflicted with §§ 64 and 67(c) of Bankruptcy Act, and (5) district court affirmed bankruptcy court's ruling, court held (1) that issue was whether seller could reclaim under UCC § 2-702(2) when seller's demand followed filing of bankruptcy petition, (2) that under § 70(c) of Bankruptcy Act, bankruptcy trustee acquired rights of hypothetical lien creditor, (3) that buyer was insolvent when it received goods from seller, (4) that seller had discovered such fact and made demand for reclamation within ten days after buyer received goods, as required by UCC § 2-702(2), (5) that state law controlled rights of bankruptcy trustee as hypothetical lien creditor, (6) that reference in UCC § 2-702(3) to rights of lien creditors directs that those rights be found exclusively in UCC Article 2 or in articles to which Article 2 refers, (7) that lien creditor was not "purchaser for value" under UCC § 2-403 and that bankruptcy trustee acquired no rights under UCC § 2-403 as against reclaiming seller, (8) that under facts of case, bankruptcy trustee also acquired no rights under UCC §§ 2-326 or 9-301, and no lien creditor could cut off seller's right to reclaim under UCC § 2-702(2), (9) that by same token, § 70(c) of Bankruptcy Act did not give trustee right to cut off seller's right to reclaim, (10) that UCC § 2-702(2) created something other than a security interest, (11) that UCC § 2-702(2) was not an unlawful priority that conflicted with § 64 of Bankruptcy Act, (12) that UCC § 2-702(2) was not lien subject to invalidation as statutory lien under § 67(c) of Bankruptcy Act, and (13) that reclamation under UCC § 2-702(2) in instant case did not constitute invalid preferential transfer under § 60 of Bankruptcy Act. Matter of PFA Farmers Market Ass'n, C.A.8 (Mo.)1978, 583 F. 2d 992

One who becomes a lien creditor under the provisions of subsec. (3), and becomes such without knowledge of a security interest and before it is perfected, has priority over another with a prior but unperfected security interest. Gray v. Raper, 115 Ga. App. 600, 155 S.E.2d 670 (1967).

10. —Knowledge immaterial.

UCC § 9-104(j) provides that UCC Art 9 does not apply to creation or transfer of interest in real estate, including lease or rents thereunder. Thus, in action by assignee of right to receive royalties and rent payments arising from lease of rock quarry against judgment lien creditors of assignor of such right and garnishees in possession of such rents and royalties, rents and royalties in garnishees' possession were not subject to UCC Art 9, and judgment lien creditors were not prohibited by UCC § 9-301 from taking priority to such funds over assignee who had unperfected security interest in funds, even though judgment lien creditors had knowledge of assignee's security interest at time they became lien creditors. Union Livestock Yards, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 552 S.W.2d 392 (Tenn. Ct. App. 1976).

In dispute between assignee for benefit of creditors and bank claiming security interest in proceeds from sale of collateral, bank held superior interest under UCC § 9-301(3) where, under New York version of UCC § 9-402, change of name of debtor firm did not affect perfection of filing made under former name, regardless of whether bank had knowledge of change of name. In re Pasco Sales Co., 77 Misc. 2d 724 (1974).

Purchaser of assets from receiver was entitled to step into receiver's shoes and claim interest superior to that of consignor which held unperfected security interest, notwithstanding that purchaser knew of consignor's claim when it purchased assets. Columbia Int'l Corp. v. Kempler, 46 Wis. 2d 550, 175 N.W.2d 465, 40 A.L.R.3d 1066 (1970).

As a secured party is not a lien creditor it is immaterial that he has knowledge of the existence of a prior unperfected security interest and where such latter secured party's interest is perfected he prevails over the prior unperfected security interest. Bloom v. Hilty, 427 Pa. 463, 234 A.2d 860 (1967).

11. —Lien creditor over judgment creditor with knowledge.

Assignee of conditional sales contract covering road grader was entitled to priority over judgment creditor which admitted having knowledge of assignee's claim to grader at time of its levy. Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

12. —Unperfected security interest over judgment or lien creditor with knowledge.

Secured creditor with security interest in crops grown during 1971 on two tracts of land, one owned by debtor and other leased by him, took priority over purported attaching creditor, claiming under writ of attachment issued November 11, 1971, with respect to proceeds from sale of crops, notwithstanding security agreement covering both tracts of land was not filed until November 12, 1971, with respect to "owned" land, although secured party's security interest was not perfected by filing as of time of levy under attaching creditor's purported attachment, evidence showed that attaching creditor either had actual notice of secured party's interest in crops or could be charged with actual knowledge or duty to secure knowledge of secured party's interest, and, thus, secured party's unperfected security interest took priority over rights of attaching creditor. Gulf Oil Co. United States v. First Nat'l Bank, 503 S.W.2d 300 (Tex. Civ. App. 1973).

Where judgment creditor admitted knowledge of bank's claim to road grader at time judgment creditor levied, judgment creditor did not have priority over bank's unperfected security interest under UCC § 9-301(1)(b). Central Nat'l Bank v. Wonderland Realty Corp., 38 Mich. App. 76, 195 N.W.2d 768 (1972).

Defendant purchased apartment house and furniture with full knowledge of plaintiff's security interest; held, defendant took subject to plaintiff's title under conditional sales contracts. Kimmel v. Keefe, 9 Cal. App. 3d 402 (1st Dist. 1970).

Fact that lien creditor had "notice" of existing security interest in equipment through its agent was sufficient to subordinate its lien to unperfected security interest, as against contention that there was insufficient "knowledge" for such subordination. Stanley v. Fabricators, Inc., 459 P.2d 467 (Alaska 1969).

B. Receivers in Equity and Assignees For Benefit of Creditors.

13. In general.

Receivers in equity of an insolvent's estate had the status of a lien creditor from the time of their appointment, under subsection (3) of this section. Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc., 13 Pa. D. & C.2d 119 (1957).

14. Assignee over unperfected security interest.

Under the terms of the above statute an unrecorded conditional sale is an unperfected security interest which is subordinate to the rights of an assignee for the benefit of creditors. In re Merkel, Inc., 45 Misc. 2d 753 (1965), rev'd on other grounds, sub nom. In re Merkel, Inc., 25 A.D.2d 764, 269 N.Y.S.2d 190 (2d Dep't 1966).

A reclaimant who had not filed a financing statement with the secretary of the commonwealth until after an assignment for benefit of creditors had been executed by the bankrupt had not complied with the statutory requirements in Pennsylvania to perfect her security interest, and the rights of the assignee for benefit of creditors would ordinarily be superior to hers. In re Komfo Prods. Corp., 247 F. Supp. 229 (E.D. Pa. 1965).

15. Miscellaneous.

A lease that reveals that it possesses none of the vital characteristics, such as a right or obligation on the part of the lessee to acquire title, which transmuted it from a lease into a conditional bill of sale, enables the lessor to recover the leased property from the lessee's assignee for benefit of creditors. In re Merkel, Inc., 46 Misc. 2d 270 (1965).

C. Lien Creditors.

16. In general.

Lien-creditor status under UCC § 9-301(1)(b) gives such creditor priority over subsequently perfected security interest. Yarbrough v. Cooper, 559 S.W.2d 917 (Tex. Civ. App. Houston 14th Dist. 1977), ref. n.r.e (Apr. 19, 1978).

17. Lien creditor and secured party distinguished.

The Uniform Commercial Code makes an express distinction between a "secured creditor" (see UCC § 9-105(1)(m)) and a "lienholder." Under UCC § 9-301(3), a "lien creditor" is a creditor who has acquired a lien on the property involved by attachment, levy, or the like. Kramer v. McDonald's Sys., 61 Ill. App. 3d 947, 378 N.E.2d 522 (1st Dist. 1978), aff'd, 77 Ill. 2d 323, 33 Ill. Dec. 115, 396 N.E.2d 504 (1979).

Although secured party had perfected security interest in after-acquired property of debtor, there is nothing in UCC § 9-301(3) which includes party with such status within definition of "lien creditor," thus, there was nothing to prevent unpaid seller from reclaiming goods sold to debtor-buyer, despite claim of secured party that it was lien creditor entitled to priority under UCC § 2-702(3). Chastain-Roberts Co. v. Better Brands, Inc., 141 Ga. App. 186, 233 S.E.2d 5 (1977).

18. Lien creditor over unperfected security interest.

Where (1) purchaser of truck, who was in default on loan made by first secured creditor, borrowed money from second secured creditor to pay off first creditor's loan, (2) first creditor's lien on truck was then discharged of record, (3) second creditor, although it obtained note and security agreement covering truck, which instruments were executed on behalf of corporation of which debtor was officer, neglected (a) to effect transfer of truck's title to debtor's corporation, (b) to perfect security interest in truck by recording its lien on vehicle's title document, and (c) to record such title document with Director of Motor Vehicles, (4) debtor's corporation became insolvent, and receiver was appointed therefor, and (5) truck was sold at judicial sale, and receiver claimed that his interest in sale proceeds had priority over second secured creditor's lien on truck, court held (1) that under UCC § 9-301(1)(b) and (3), providing that unperfected security interest is subordinate to rights of one who becomes "lien creditor" without knowledge of such security interest and before it is perfected, receiver of debtor's corporation had apparent priority as a "lien creditor" because second creditor's unperfected lien on truck would yield to receiver's priority as "lien creditor" who had no knowledge of second creditor's lien, in absence of any evidence that creditors represented by receiver had any such knowledge themselves, (2) that despite receiver's apparent priority, the Uniform Commercial Code, under UCC § 1-103, is supplemented by principles of law and equity unless such principles are displaced by any provision of the code, (3) that no particular provision of UCC Article 9 had displaced the doctrine of equitable subrogation where such doctrine was properly invocable as a matter of substantive law, and (4) that under all circumstances of case, second creditor's contention that it was entitled to be subrogated to first creditor's recorded lien before such lien was discharged, on the ground that second creditor's money was used to pay off such prior lien, should be sustained. Kaplan v. Walker, 164 N.J. Super. 130, 395 A.2d 897 (App. Div. 1978).

In interpleader proceeding to establish priority of claims to money due and payable to debtor under general agency contract, UCC § 9-104 exemption from coverage of article 9 of claims for wages, salary, or other compensation of employee was inapplicable where debtor was independent contractor; creditor who had obtained perfected security interest in debtor's commissions had first priority against funds, while rights of creditor who had failed to perfect its security interest as required by UCC § 9-302 were subordinated to rights of those who qualified as lien creditors under UCC § 9-301; burden of proof as to whether lien creditors had knowledge of unperfected security interest rested on holder of unperfected security interest. Massachusetts Mut. Life Ins. Co. v. Central Penn Nat'l Bank, 372 F. Supp. 1027 (E.D. Pa. 1974), aff'd sub nom. In re Franklin Nat'l Bank, 510 F.2d 969 (3d Cir. Pa. 1975), aff'd, 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Mercantile Financial Corp., 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Miller, 510 F.2d 970 (3d Cir. Pa. 1975), aff'd sub nom. In re Mokrin, 510 F.2d 970 (3rd Cir. Pa. 1975).

Under the statute, a person, who becomes a lien creditor of the conditional vendee without knowledge of the conditional vendor's security interest and prior to the perfection of that security interest, would take priority over the conditional vendor with respect to interest in the subject property. L.B. Smith, Inc. v. Foley, 341 F. Supp. 810 (W.D.N.Y. 1972).

In Oklahoma, under UCC § 9-301(1)(b) an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor without knowledge of the security interest and before it is perfected. In re McClain, 447 F.2d 241 (10th Cir. Okla. 1971), cert. denied, 405 U.S. 918, 92 S. Ct. 943, 30 L. Ed. 2d 788 (1972).

19. —Assignment of accounts, contract rights.

In suit to determine priority as between mechanic's lien on "Payloader" machine and assignee's unperfected security interest in machine, where (1) machine was purchased by lessor who immediately sold it to lessee under lease-purchase agreement intended as security instrument and not as mere lease; (2) lessor in good faith filed financing statement in improper county before assigning financing paper to plaintiff; (3) machine was later repaired by mechanic who had mechanic's lien for such repairs; and (4) lienholder at time of acquiring lien was not aware of lessor's security interest in machine, lienholder's lien under UCC § 9-301(1)(b) had priority over plaintiff's unperfected security interest. ITT Indus. Credit Co. v. Robinson, 350 So. 2d 48 (Miss. 1977).

Factoring company, to whom an attorney assigned fees to be received from a certain client, which failed to perfect its security interest by filing a financing statement was subordinated to the rights of another lawyer who, with no knowledge of the prior assignment, became entitled to receive the fees by reason of an agreement with the assigning attorney. In re Cohen's Estate, 38 Pa. D. & C.2d 777 (1966).

Since the absolute assignment by a partner to his co-partner of the right to collect from the state highway department the partner's share of money due for work done by the partnership on a completed highway construction project was not an assignment of a contract right but was an assignment of an account, the assignment was not a security transaction and, consequently, a subsequent attachment by the partner's judgment creditor of money due on the highway project did not create a lien having priority over the prior assignment. Spurlin v. Sloan, 368 S.W.2d 314 (Ky. 1963).

20. —Lease intended as security interest.

A lease-purchase agreement covering an air compressing machine which provided that 85 percent of the rental was to be applied on the specified price of the machinery was a security interest created by contract and, being unrecorded, it did not protect the lessor from a lien creditor of the lessee. United Rental Equip. Co. v. Potts & Callahan Contracting Co., 231 Md. 552, 191 A.2d 570 (1963).

21. —Other transactions intended as security interest.

Where document evidencing transaction involving walk-in food freezer as titled "Contract of Sale and Agreement," parties termed themselves buyer and seller and expressed desire to consummate sale of freezer, monthly payments of "rent" were in reality interest on deferred purchase price, transaction was conditional sale, rather than lease, and contract created security interest in seller; and since seller never filed financing statement to perfect his security interest, perfected security interest of Small Business Administration in buyer's equipment and fixtures had priority. Witmer v. Kleppe, 469 F.2d 1245 (4th Cir. W. Va. 1972).

22. Place of filing.

Where financing statements filed with secretary of state alone and not filed locally did not protect security interest, lien creditor had priority over holder of security interests. Package Mach. Co. v. Cosden Oil & Chem. Co., 51 A.D.2d 771 (2d Dep't 1976).

23. —Timely filing.

Holder of security interest in debtor's accounts receivable, customer obligations or other choses in action was subordinated with respect to chose in action to garnishing creditor whose lien was created before security interest was perfected, but was superior after perfection to claim of all other creditors who intervened in proceedings. General Lithographing Co. v. Sight & Sound Projectors, Inc., 128 Ga. App. 304, 196 S.E.2d 479 (1973).

24. Judgment lien creditor over unperfected security interest.

Where ranch owners sold ranch, including equipment and cows, to buyers and executed security agreement for balance of purchase price, but no financing statement was filed as provided by UCC § 9-302, where buyers purchased cattle feed from feed seller, but failed to pay for feed, where subsequently buyers voluntarily relinquished possession of ranch, cows and equipment to owners, and where feed seller sued buyers for unpaid feed bill, obtained stipulated judgment and levied execution on cows, under UCC § 9-301(1)(b), feed seller, a lien creditor, had priority over unperfected security interest of owners. Kulik v. Albers, Inc., 91 Nev. 134, 532 P.2d 603 (1975).

Judgment creditor was entitled to priority over assignee of debtor's expected recovery of pending lawsuit, where assignee failed to perfect security interest by filing. Friedman, Lobe & Block v. C.L.W. Corp., 9 Wash. App. 319, 512 P.2d 769 (1973).

Lien obtained through attachment execution on partnership interest, after defendant had allegedly assigned interest to his attorney as collateral for fees and costs, took priority over rights of attorney-assignee; partnership interest came within definition of "general intangible" under UCC § 9-106, security interest therein was clearly within scope of security interests governed by article 9 of code under UCC § 9-102, and, inasmuch as no financing statement was filed under UCC § 9-302, such security interest was unperfected and plaintiff's lien, obtained through attachment execution, took priority under UCC § 9-301 over rights of defendant's attorney as holder of unperfected security interest of which plaintiff had no knowledge. Med-Mar, Inc. v. Dilworth, 96 Montg. County L. Rep. 91 (Pa. 1972).

Failure to perfect security interest necessarily subordinated unperfected security interest to creditor holding judicial lien without knowledge of security interest. Mann v. Clark Oil & Ref. Corp., 302 F. Supp. 1376 (E.D. Mo. 1969), aff'd, 425 F.2d 736 (8th Cir. Mo. 1970).

D. Secured Interests.

25. In general.

In action to recover possession of motor home that plaintiff secured party had sold to debtor under retail installment contract and security agreement, where (1) plaintiff, although authorized to file financing statement, did not do so before assigning installment contract and security agreement to bank, (2) after contract and security agreement had been assigned to bank, debtor transferred title to home to third-party purchaser, (3) such purchaser resold home to another third party who, in turn, resold it to defendant, (4) after first third-party purchaser had purchased home, bank filed financing statement that listed only original buyer of home as "debtor," and (5) on original buyer's default in making payments, bank reassigned installment contract and security agreement to plaintiff, which sought to replevy home from last third-party purchaser, court held (1) that even though bank was aware that title to home had been transferred to first third-party purchaser, bank nevertheless, on filing its financing statement, listed only original buyer as "debtor" on such statement, (2) that financing statement, as a result, failed under UCC §§ 9-402(1) and 9-105(1)(d) to identify "debtor" properly in situation where owner of collateral and obligor on financing agreement were not the same person, (3) that plaintiff's security interest was therefore not perfected, and (4) that since defendant third-party purchaser had purchased home out of ordinary course of business and without knowledge of plaintiff's unperfected security interest therein, defendant's ownership of home was free of such security interest under UCC § 9-301(1)(c). White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Under UCC § 9-302(1)(d), a valid financing statement, properly filed, perfects a security interest in a motor vehicle. Until that time, under UCC § 9-301(1)(c), a buyer not in the ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the unperfected security interest, takes free of such interest. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Where (1) Pennsylvania seller sold boat to Pennsylvania buyer and delivered it to buyer in Maryland, (2) secured party, which had financed purchase of boat by conditional sales contract, perfected its security interest in boat by filing financing statement in Pennsylvania (3) buyer resold boat to third person in Maryland, (4) seller, as representative of secured party, thereafter came to Maryland, took possession of boat, and returned it to seller's premises in Pennsylvania, and (5) second buyer brought replevin action to recover possession of boat, court held (1) that under UCC § 9-103(3), secured party's security interest in boat, which had been perfected under Pennsylvania law, was also perfected for four months under Maryland law, (2) that after such four-month period had run, secured party's failure to file financing statement in Maryland caused its security interest to become unperfected, and (3) that under UCC § 9-301(1)(c), such unperfected interest was subordinate to rights of second buyer, who was buyer not in ordinary course of business who gave value and received delivery of the collateral without knowledge of security interest therein and before such interest was reperfected in Maryland. Wind v. Westinghouse Credit Corp., 260 Pa. Super. 385, 394 A.2d 980 (1978).

The rights of a holder of a perfected security interest are superior to this of a lien creditor, and are also superior to those of a third party purchaser at a sheriff's sale. GMAC v. Stotsky, 60 Misc. 2d 451 (1969).

A buyer who purchases an almost new automobile not in the ordinary course of business cannot, under this section, take against the holder of a perfected security interest, and the seller's delivery of the car under these circumstances was a conversion as against the holder of the security interest. Al Maroone Ford, Inc. v. Manheim Auto Auction, Inc., 205 Pa. Super. 154, 208 A.2d 290 (1965).

26. Perfected security interest over lien creditor.

Term "advances" are sums put at disposal of borrower, and do not include expenditures made by lender for his own benefit; § 75-9-301 is intended to protect lien creditors by giving them special priority only against security interests securing certain sorts of future advances, and general rules as to non-advance obligations are not upset. Dick Warner Cargo Handling Corp. v. Aetna Bus. Credit, Inc., 746 F.2d 126 (2d Cir. Conn. 1984).

Application for certificate of title to house trailer, signed by buyer, describing security interest, and containing description of trailer, was sufficient to create security agreement within meaning of UCC § 9-203 and filing of application for certificate of title with the Secretary of State as provided by the state vehicle code constituted perfection of security interest; thus, pursuant to UCC § 9-301(1), seller's security interest was superior to subsequently attaching landlord's lien. Peterson v. Ziegler, 39 Ill. App. 3d 379, 350 N.E.2d 356 (5th Dist. 1976).

Where secured party's security interest in collateral was perfected at time of assignment and account debtor's assignee had notice of assignment, secured party's rights were protected by continuation statement unilaterally filed by secured party within time limits prescribed by Code, so that secured party's claim to collateral was superior to that of assignee as lien creditor. In re Marta Coop., 74 Misc. 2d 612 (1973).

Secured creditor who has duly filed financing statement covering after-acquired collateral is entitled to priority over subsequent lien creditors seeking to levy on same property. Grain Merchants of Indiana, Inc. v. Union Bank & Sav. Co., 408 F.2d 209 (7th Cir. Ind. 1969), cert. denied, 396 U.S. 827, 90 S. Ct. 75, 24 L. Ed. 2d 78 (1969), but see, In re Coppie, 728 F.2d 951 (7th Cir. Ind. 1984), but see, Redmond v. Mendenhall, 107 B.R. 318 (D. Kan. 1989).

A buyer who purchases an almost new automobile not in the ordinary course of business cannot, under this section, take against the holder of a perfected security interest, and the seller's delivery of the car under these circumstances was a conversion as against the holder of the security interest. Al Maroone Ford, Inc. v. Manheim Auto Auction, Inc., 205 Pa. Super. 154, 208 A.2d 290 (1965).

27. —Assignments.

Where owner of stock in corporation formed to sell eggs, after selling such stock under contract providing that buyers would make payments on instalment plan, assigned right to sale proceeds to third party as security for loan that third party made to owner; where third party then perfected its security interest by appropriate filing; and where purported statutory lien of owner's divorced wife on such stock, which was based on execution on alimony judgment, had lapsed as to owner's general personalty and never did exist as to owner's stock because no levy was ever made on stock specifically, under UCC § 9-301(1)(b) third party's right to proceeds of stock's sale was superior to alleged right thereto of divorced wife. Ralston Purina Co. v. Detwiler, 173 Ind. App. 513, 364 N.E.2d 180 (1977).

Proper filing of financing statement under UCC § 9-405(1) which disclosed on face assignment of security interest in ice cream store equipment fixed status of assignee as secured party of record with priority of interest over that of lien creditor under UCC § 9-301 who, after judgment for unpaid rent, attached property and requested sale thereof with full knowledge of assignee's claim to equipment. Marco Fin. Co. v. Solbert Indus., Inc., 534 S.W.2d 469 (Mo. Ct. App. 1975).

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

28. Perfected security interests over unperfected.

Failure of creditor with perfected purchase money security interest to renew original filing relegated creditor to standing of unperfected secured creditor; creditor did not reperfect its purchase money lien upon repossession of collateral, due to 20-day perfection requirement. United States v. Williams, 82 B.R. 430 (Bankr. N.D. Miss. 1988).

Trustee of bankrupt buyer of mobile trailer in issue, who under federal bankruptcy law had rights of lien creditor with respect to bankrupt's assets as of date of filing of bankruptcy petition, could not successfully contend that his equitable right to compel seller of trailer to convey title thereto to trustee had priority, under UCC § 9-301(1)(b), over bank's security interest in trailer where bank's security interest was perfected prior to date on which bankruptcy petition was filed. Mann v. Belle Bland Bank, 451 F. Supp. 268 (E.D. Mo. 1978), aff'd, 592 F.2d 993 (8th Cir. Mo. 1979).

Where chattel mortgage on trailer was detective under UCC § 9-402(1) as filed financing statement because it lacked both address of secured party and debtor's mailing address, chattel mortgagee's security interest was unperfected under § 9-302(1), and under UCC § 9-301(1)(b), judgment lien creditor, which had obtained judgment against chattel mortgagor, executed on such judgment, and seized trailer in suit, had priority to proceeds from trailer's sale. Cushman Sales & Serv. of Neb., Inc. v. Muirhead, 201 Neb. 495, 268 N.W.2d 440 (1978).

In action by lender to establish security interest in mobile homes "floor-planned" for dealer, (1) where lender pursuant to written agreement advanced money to dealer in Arizona for inventory financing, agreement gave lender security interest in all of dealer's present and after-acquired inventory, and lender filed financing statement with Arizona secretary of state; (2) where Alabama manufacturer thereafter orally sold 16 mobile homes to dealer but was not paid therefor, invoice accompanying such homes stated that title thereto could be transferred only through manufacturer's certificate of origin, and manufacturer retained all such certificates; (3) where manufacturer did not file financing statement evidencing its interest in such homes with Arizona secretary of state; and (4) where Arizona motor-vehicle registration code, at time of sale of homes to dealer, exempted them from registration requirement while they were still owned by dealer or manufacturer, plaintiff lender (1) was not required to file financing statement and certificates of title to homes with Arizona motor-vehicle division in order that lender's lien could be indorsed on such certificates and lender's security interest in dealer's inventory could be perfected; (2) lender's security interest in homes was perfected merely by filing financing statement with Arizona secretary of state pursuant to UCC § 9-302(1) and UCC § 9-401; (3) manufacturer, by retaining title to homes, merely reserved unperfected purchase-money security interest therein under UCC § 2-401; and (4) lender's perfected security interest in homes had priority over manufacturer's unperfected security interest therein under UCC § 9-301. GECC v. Tidwell Indus., Inc., 115 Ariz. 362, 565 P.2d 868 (1977).

When seller failed to perfect security interest in goods in question, as he might very well very easily have done, his security interest or lien becomes subordinate to lien validly attaching to property. Harney v. Spellman, 113 Ill. App. 2d 463, 251 N.E.2d 265 (4th Dist. 1969).

As a secured party is not a lien creditor it is immaterial that he has knowledge of the existence of a prior unperfected security interest and where such latter secured party's interest is perfected he prevails over the prior unperfected security interest. Bloom v. Hilty, 427 Pa. 463, 234 A.2d 860 (1967).

29. —Place of filing.

Where creditor of New York lessor of heavy equipment, installed in New Jersey by New Jersey lessee, perfected security interest in equipment leases by New York filing but not perfect its interest in reversion in New Jersey where equipment was located, lessor's trustee in bankruptcy had priority with respect to equipment itself over creditor's unperfected security interest. In re Leasing Consultants, Inc., 351 F. Supp. 1390 (E.D.N.Y. 1972), remanded, 486 F.2d 367 (2d Cir. N.Y. 1973).

Where creditor of New York lessor of heavy equipment, installed in New Jersey by New Jersey lessee, perfected security interest in equipment leases by New York filing but not perfect its interest in reversion in New Jersey where equipment was located, lessor's trustee in bankruptcy had priority with respect to equipment itself over creditor's unperfected security interest. In re Leasing Consultants, Inc., 351 F. Supp. 1390 (E.D.N.Y. 1972), remanded, 486 F.2d 367 (2d Cir. N.Y. 1973).

30. —Timely perfection.

In action to determine priorities of assignments made by owner of condemned land to proceeds of condemnation award, (1) under UCC § 9-301(1)(a) and § 9-312(5)(a), assignee which had first perfected its security interest by filing financing statement with secretary of state had first priority in such proceeds, (2) assignee which had perfected its security interest by filing after date on which holder of first priority had filed had second priority, (3) assignee which had never filed financing statement had third priority, and (4) all of such priorities were subordinate to lien of attorney for owner of the condemned land, even though attorney's notice of intent to enforce his attorney's lien was not filed in record of action until after both perfected creditors had filed their financing statements, since under circumstances of case, such creditors had duty to inquire about status of attorney's lien. Board of County Comm'rs v. Berkeley Village, 40 Colo. App. 431, 580 P.2d 1251 (1978).

In action between creditors for possession of debtors' (husband and wife) collateral, where (1) (a) plaintiff creditor's security agreement, which did not provide for future advances, covered debtors' household furnishings, (b) plaintiff properly filed financing statement on December 20, 1973, (c) debt was fully paid on November 8, 1974, and (d) plaintiff did not file termination statement, (2) defendant creditor's security agreement covered essentially the same property, and defendant properly filed financing statement on January 3, 1975, (3) (a) plaintiff creditor, on July 11, 1975, December 1, 1975, and July 2, 1976, made new loans to debtors, (b) debtors executed new security agreements covering same collateral first pledged in 1973, and (c) plaintiff relied on December 20, 1973 financing statement, (4) debtors filed petition in bankruptcy on September 23, 1976, and (5) defendant creditor, on September 30, 1976, seized property covered by both plaintiff's and defendant's perfected security interests, court held (1) that all loans made by plaintiff and defendant, except plaintiff's July 2, 1976 loan, were governed by pre-1972 UCC § 9-312(5)(a), which determined priority between conflicting security interests in same collateral by order of filing if both were perfected by filing, (2) under pre-1972 UCC § 9-312(5)(a), plaintiff's security interest in collateral for plaintiff's July 11, 1975 and December 1, 1975 loans, which was perfected at time such loans were made, had priority over defendant's security interest in the same collateral because plaintiff was the first to file, (3) such priority was not affected by fact that plaintiff's original loan, which was covered by plaintiff's filed financing statement of December 20, 1973, had been paid off, since under pre-1972 UCC § 9-403(2), a financing statement specifying no maturity date was effective for five years from date of its filing, and debtors had not requested that they be sent a termination statement, (4) under UCC § 9-312(7), which was added to Uniform Commercial Code in 1972, plaintiff's July 2, 1976 advance had same priority as plaintiff's December 1, 1975 advance, thus giving plaintiff's July 2, 1976 loan priority over defendant's loan, (5) since only one of the debtors-the wife-had properly signed plaintiff's December 20, 1973 financing statement, plaintiff's security interest had priority over defendant's security interest only to extent of wife's interest in the collateral, and (6) conversely, defendant's security interest in property of husband, and also in property of wife that was not listed in plaintiff's December 20, 1973 financing statement, had priority over plaintiff's security interest under pre-1972 UCC § 9-301(1)(a) and § 9-312(5)(a). Provident Fin. Co. v. Beneficial Fin. Co., 36 N.C. App. 401, 245 S.E.2d 510 (1978), cert. denied, 295 N.C. 549, 248 S.E.2d 728 (1978).

Under UCC § 9-301, security interest of cattle seller was subordinate to rights of garnishing lien creditor where debtor purchased cattle from seller and paid for them with check which was subsequently dishonored for insufficient funds, where debtor shipped cattle to livestock auction company for resale and writ of garnishment was served on auction company, where seller and debtor subsequently executed security agreement and financing statement, back-dated, and properly describing cattle in question and where financing statement was filed within ten days after debtor purchased cattle from seller. Ranchers & Farmers Livestock Auction Co. v. First State Bank, 531 S.W.2d 167 (Tex. Civ. App. 1975), ref. n.r.e. (Apr. 7, 1976).

In action involving determination of priority between lien resulting from attachment in California of trousers produced in foreign countries and consigned to purchaser in North Carolina, and bank's security interest resulting from financing agreements executed and filed in North Carolina, any right of bank was subordinate to attachment lien, where, pursuant to UCC § 9-102, the "situs" rule for choice of law applied, and where, under California law, bank had not perfected its security interest at time trousers were sited in California and were attached. Joint Holdings & Trading Co. v. First Union Nat'l Bank, 50 Cal. App. 3d 159 (2d Dist. 1975).

A debtor who fails to file a financing statement with the Secretary of State and the town clerk, giving notice of existence of a conditional sales contract, has not perfected his security interest, and his rights are subordinate to those of another subsequent creditor who timely filed financing statements giving notice of existence of a chattel mortgage covering the same personal property and fixtures. Cain v. Country Club Delicatessen of Saybrook, Inc., 25 Conn. Supp. 327, 203 A.2d 441 (1964).

31. Perfected security interest over judgment creditor.

Creditor which had perfected security interest in most of debtor's assets on April 3, 1972 by filing proper financing statements, and which subsequently perfected such security interest in all of debtor's assets on January 28, 1975, by taking possession thereof, had under UCC § 9-301(1) and UCC § 9-312 right to assets superior to right of second creditor which did not acquire interest in assets until April 11, 1975, when it levied execution on judgment against debtor and became lien creditor under UCC § 9-301(3). Thus, on debtor's default, first creditor could sell such assets under UCC § 9-504(1) and retain all proceeds of sale when proceeds did not fully satisfy debt owed to such creditor. GE Co. v. Hol-Gar Mfg. Corp., 431 F. Supp. 881 (E.D. Pa. 1977), aff'd, 573 F.2d 1301 (3d Cir. Pa. 1978).

Since security interests perfected by proper filing take priority over all unfiled and unperfected interests (Uniform Commercial Code, § 9-301) and liens of judgment creditors are perfected only by the issuance of an execution pursuant to CPLR 5202 (subd [a]), the lien of plaintiff judgment creditor levied upon against defendant debtor corporation's bank accounts in June, 1977 was subsequent and subordinate to the security interest filed and perfected in October, 1975 by defendant's bank under an accounts receivable agreement by which defendant assigned its accounts receivable to the bank as security for indebtedness and upon defendant's default the bank was entitled under such agreement and section 151 of the Debtor and Creditor Law to apply the funds in defendant's cash collateral, general and payroll accounts to defendant's debt without regard to plaintiff's levy against them. Cibro Petro. Prods. Inc. v. Fowler Finishing Co., 92 Misc. 2d 450 (1977).

Security interest of bank in debtor's cash collateral account, which was perfected by proper filing on October 20, 1975, had priority under UCC § 9-301(1)(b) over lien of creditor who obtained judgment against debtor and had execution issue on judgment on June 2, 1977 against debtor's cash collateral account with bank, since under state law, lien of judgment creditor could not be perfected until issuance of execution on judgment. Cibro Petro. Prods. Inc. v. Fowler Finishing Co., 92 Misc. 2d 450 (1977).

Fully perfected security interest in account receivable was superior to lien of subsequent judgment creditor who levied on such account prior to default on part of debtor in secured transaction, notwithstanding fact that at time of levy there was no default on bank loan to which security agreement related; rights of parties were fixed, not when levy was made, but rather when security interest attached. Shaw Mudge & Co. v. Sher-Mart Mfg. Co., 132 N.J. Super. 517, 334 A.2d 357 (App. Div. 1975).

In garnishment action, garnishee was entitled to discharge upon proof of prior valid assignment by judgment debtor, and was not required to prove that unfiled security interest of assignee took priority over subsequent judgment lien. Liberty Leasing Co. v. Crown Ice Mach. Leasing Co., 19 Ill. App. 3d 27, 311 N.E.2d 250 (1st Dist. 1974).

Held, inasmuch as properly filed financing statement charged judgment-creditor with notice of outstanding security interest, garnishee-bank was entitled to priority over lien held by judgment creditor, under UCC § 9-301(1)(b). Mid-Eastern Elecs., Inc. v. First Nat'l Bank, 455 F.2d 141 (4th Cir. Md. 1970).

Once purchase money security agreement is entered into and financing statement evidencing that agreement is filed in accordance with requirements of Code, then secured party acting in good faith acquires rights which are superior to subsequent judgment creditors and third party purchasers. GMAC v. Stotsky, 60 Misc. 2d 451 (1969).

Log seller who had taken judgment and garnishment against log buyer was "lien creditor" within Code § 9-301(3), and as such had claim subordinate to previously perfected security interest under Code § 9-301(1)(b). Stumbo v. Paul B. Hult Lumber Co., 251 Or. 20, 444 P.2d 564 (1968).

Where petitioner's security interest was perfected by proper filing, it thereupon took priority over all unfiled and unperfected interests, including the rights of judgment creditors who thereafter issued execution, since under Rule 5202(a) CPLR such creditors are perfected only by the issuance of execution; and, upon default in payments due on the indebtedness secured by the interest, petitioner became entitled to immediate possession of the collateral under the provisions of § 9-503. William Iselin & Co. v. Burgess & Leigh Ltd., 52 Misc. 2d 821 (1967).

32. Unperfected security interests as between parties.

Lack of perfection of security interest under Article 9 of UCC relates only to priority over other creditors' interests in collateral, and security agreement as between parties themselves and secured party's rights over collateral as against debtor are unaffected by failure to perfect security interest; thus, assignee for security purposes of beneficial interest in land trust was entitled to redeem from tax sale of real estate which comprised corpus of trust notwithstanding his failure to perfect security interest by filing financing statement. Application of County Treasurer of Du Page County, 16 Ill. App. 3d 385, 306 N.E.2d 743 (2d Dist. 1973).

As between the parties, the fact that the creditor's interest is not noted on the title certificate is immaterial since as between the creditor and the debtor the creditor's security interest attaches immediately upon the execution of a written agreement that there be such an interest, which agreement describes the collateral, bears the debtor's signature, and does not include any provision expressly postponing the attaching of the security interest. Anderson v. First Jacksonville Bank, 243 Ark. 977, 423 S.W.2d 273 (1968).

Although failure to file and record notice of insurance salesman's partial assignment of future commissions might affect the priorities of creditors, it would have no bearing on the validity of the instrument as between the immediate parties thereto under the Arkansas version of this and succeeding sections. Union Life Ins. Co. v. Perkins, 257 F. Supp. 154 (E.D. Ark. 1966).

33. Unperfected security interests over other transactions.

Transferee of furniture store inventory was transferee in bulk under UCC § 6-102, rather than buyer in ordinary course of business under UCC § 9-307(1), and, having failed to request transferor to furnish list of creditors as required by UCC § 6-104(1), was subordinate to rights of secured party who had prior unperfected security interest in inventory where furniture transferred clearly represented entire inventory of transferor, where transferor was retail furniture store whose principal business was sale of merchandise from stock, and where transfer was not in ordinary course of transferor's business; although transferor was retail outlet owned by furniture wholesaler, for purposes of determining whether sale was major part of inventory of enterprise within meaning of UCC § 6-102(1), only retail outlet would be considered since transferee's dealings with transferor concerned only retail outlet and its inventory, and retail outlet was, at all times, considered separate entity. National Bank v. Frydlewicz, 67 Mich. App. 417, 241 N.W.2d 471 (1976).

Where buyer paid for used automobiles with check which was dishonored after buyer executed "trust receipts" agreement which specified that bank would hold security interest in automobiles as collateral for loan, bank had unperfected security interest in automobiles which was superior to seller's right to reclaim cars, seller's remedy being an action against buyer for price of delivered goods under Code § 2-709. Guy Martin Buick, Inc. v. Colorado Springs Nat'l Bank, 32 Colo. App. 235, 511 P.2d 912 (1973), aff'd, 184 Colo. 166, 519 P.2d 354 (1974).

34. Unperfected security interests over tax lien.

Security interest need not be perfected under UCC in order to be protected against subsequent judgment lien under Section 6323(h)(1) of Federal Tax Lien Act and thus creditor's security interest in debtor's popcorn crop was not primed by federal tax lien merely because creditor failed to file financing statement in county where debtor resided as required by UCC § 9-401(1)(a). However, creditor's security interest was not protected under Federal Tax Lien Act and did not prime government's tax lien, even if property was in custodia legis before government's tax lien was filed, where it was possible for hypothetical creditor to obtain judgment lien against property purportedly in custodia legis without obtaining knowledge of secured party's security interest; hypothetical creditor could attach judgment lien to property in custodia legis by obtaining in personam judgment against debtor in another court and delivering writ of execution based on that judgment to sheriff at which time lien would attach to debtor's property and creditor would become "lien creditor" under UCC § 9-301(3) without creditor learning of action pending in court holding property. Dragstrem v. Obermeyer, 549 F.2d 20 (7th Cir. Ind. 1977).

E. Tax Liens.

35. In general.

United States was within "lien creditor" definition of UCC § 9-301 where it had filed its tax lien and had what was in effect a judgment at the time it made its tax assessment. L.B. Smith, Inc. v. Foley, 341 F. Supp. 810 (W.D.N.Y. 1972).

36. Tax lien creditor over unperfected security interest.

Contractor's assignment of right to payment to its surety pursuant to indemnity agreement was account or contract right within meaning of UCC § 9-106 and was, as such, security interest subject to provisions of Article 9 of UCC; however, UCC §§ 9-301 and 9-302 provide that, with respect to such security interests in accounts and contract rights, any lien creditor, including judgment lien creditor, will have priority over secured interest unless financing statement has been filed; since no such financing statement was filed by surety with respect to assignment in question, its security interest remained subordinate to tax liens of United States. American Fid. Fire Ins. Co. v. United States, 385 F. Supp. 1075 (N.D. Cal. 1974).

37. Tax lien creditors versus judgment creditors; timeliness.

Where (1) plaintiffs obtained judgment against debtor on December 10, 1974 and delivered writ of execution on judgment to county sheriff on December 12, 1974, (2) Internal Revenue Service, on January 15, 1975, filed with county recorder of deeds notice of lien on all of debtor's property pursuant to October 7, 1974 assessment for unpaid taxes, (3) bank paid balance in debtor's account to United States pursuant to notice of levy served by Internal Revenue Service, and (4) plaintiffs obtained citation from county circuit court to discover debtor's assets on January 23, 1975 and, on finding bank account depleted, requested Internal Revenue Service to return money on ground that it had been wrongfully seized, plaintiffs acquired lien on debtor's intangible personal property (bank account) on delivery of writ of execution to sheriff, were lien creditors within meaning of UCC § 9-301(3), and their lien had priority under first-in-time, first-in-right rule of federal statute (26 USCS § 6323) over tax lien filed by Internal Revenue Service. Asher v. United States, 570 F.2d 682 (7th Cir. Ill. 1978).

Where plaintiffs did not become judgment lien creditors, within meaning of phrase "lien creditor" contained in UCC § 9-301(3), until April 3, 1975, when they obtained judgment against defendant corporation for unpaid debt, and where United States properly filed lien against defendant corporation on March 13, 1975 for unpaid federal withholding taxes under assessment made on February 17, 1975, United States had priority to proceeds of sheriff's sale of defendant's personal property which were held by receiver of county in which defendant was located, since the federal tax lien was filed before plaintiffs obtained their judgment against defendant and under 26 USCS § 6323, plaintiffs were required to become judgment lien creditors, within meaning of UCC § 9-301(3), before filing of such tax lien in order to have priority. Harrison v. Harold Cox Concrete Constr. Co., 440 F. Supp. 859 (W.D. Ky. 1977).

38. Tax lien creditors versus perfected security interest; place of filing.

Security interest need not be perfected under UCC in order to be protected against subsequent judgment lien under Section 6323(h)(1) of Federal Tax Lien Act and thus creditor's security interest in debtor's popcorn crop was not primed by federal tax lien merely because creditor failed to file financing statement in county where debtor resided as required by UCC § 9-401(1)(a). However, creditor's security interest was not protected under Federal Tax Lien Act and did not prime government's tax lien, even if property was in custodia legis before government's tax lien was filed, where it was possible for hypothetical creditor to obtain judgment lien against property purportedly in custodia legis without obtaining knowledge of secured party's security interest; hypothetical creditor could attach judgment lien to property in custodia legis by obtaining in personam judgment against debtor in another court and delivering writ of execution based on that judgment to sheriff at which time lien would attach to debtor's property and creditor would become "lien creditor" under UCC § 9-301(3) without creditor learning of action pending in court holding property. Dragstrem v. Obermeyer, 549 F.2d 20 (7th Cir. Ind. 1977).

Secured creditor's lien was not entitled to priority over federal tax lien where financing statement was filed with county recorder instead of secretary of state as required by UCC § 9-401; although government had actual knowledge of security interest sufficient to give plaintiff priority under UCC § 9-301, federal test to determine existence of security interest was not met. Fred Kraus & Sons v. United States, 369 F. Supp. 1089 (N.D. Ind. 1974), aff'd, 506 F.2d 1404 (7th Cir. Ind. 1974).

Federal tax lien filed on April 14 had priority over security interest filed locally on April 13, but not filed centrally with Secretary of State until April 15. Richardson v. United States, 358 F. Supp. 994 (E.D. Ark. 1973).

F. Trustee in Bankruptcy.

39. In general.

Since, under Pennsylvania law, the seller's right of rescission is not an absolute right but is subject to the right of a lien creditor who extended credit subsequent to the sale, and by virtue of § 70(c) of the Bankruptcy Act, the trustee in bankruptcy has rights of lien creditor, the trustee in bankruptcy has superior rights to the proceeds from the sale of seller's goods, even if the sale of goods on credit has been induced by positive misrepresentation by the bankrupts, and the seller had attempted to rescind the sale. In re Kravitz, 278 F.2d 820 (3d Cir. Pa. 1960).

40. Trustee in bankruptcy over perfected security interest; timely filing.

Since bankruptcy petition was filed before perfection of lien, trustee's rights in collateral are superior to rights of lienholder. In re Russell, 300 F. Supp. 6 (E.D. Tenn. 1969).

The security interests of the seller of equipment for a butcher business and a retail grocery store were subordinate to that of the buyers' trustee in bankruptcy where the seller did not file copies of the contracts in the office of the Secretary of the Commonwealth until after the buyers were adjudicated bankrupt, although copies were filed in the office of the prothonotary of the county wherein the buyers conducted their business. In re Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957).

41. —Perfected security interest over trustee in bankruptcy.

Where (1) five shipments of nylon yarn shipped from the Netherlands were delivered to and accepted by buyer in South Carolina on or before August 23, 1976, (2) buyer, after failing to pay major part of purchase price, filed petition in bankruptcy on August 31, 1976, and seller in adversary proceeding against bankruptcy trustee sought to reclaim goods or recover balance due thereon, (3) contract between seller and buyer provided that notwithstanding delivery of goods, title thereto remained in seller until full payment by buyer, that all disputes arising out of the contract were to be governed by English law, and that buyer accepted jurisdiction of any courts in England or elsewhere that seller might designate, (4) seller claimed (a) that under UCC § 2-401(1), such title-retention clause created security interest in seller's favor that must be deemed to have been perfected with regard to either the Netherlands or England because law of such countries did not provide for perfecting security interests by notice filing, (b) that as a result, seller had benefit of four-month-continuation-of-perfection provision set forth in UCC § 9-103(3), and (c) that because yarn had arrived at buyer's plant in South Carolina within four months of August 31, 1976 (date on which buyer's bankruptcy petition was filed and bankruptcy trustee's lien arose), seller's perfected security interest was superior to trustee's lien, court held (1) that because seller relied on UCC § 2-401(1) to validate its security interest, court would conclude that seller had security interest in goods, (2) that under the Uniform Commercial Code, a consensual security interest that arises by virtue of UCC § 2-401(1) is subject to perfection and priority provisions of Article 9, as provided by UCC § 9-113, as long as the debtor lawfully has possession of goods, (3) that since buyer in present case had possession of goods, seller should have filed financing statement to perfect its security interest and thus render it superior to bankruptcy trustee's lien, and (4) that since no such financing statement was filed, either before delivery of goods or before August 31, 1976, seller's security interest had never been perfected and could not prevail over trustee's lien under UCC § 9-101(1)(b), which provides that unperfected security interest is subordinate to rights of person who becomes lien creditor without knowledge of the security interest and before it is perfected. In re Duplan Corp., 455 F. Supp. 926 (S.D.N.Y. 1978).

Trustee in bankruptcy of meat packer, as hypothetical lien creditor under UCC § 9-301(a)(2), (c), had interest superior to unperfected interest of cash sellers of cattle, but interest of trustee was subordinate to perfected security interest of meat packer's finance agency. Stowers v. Mahon, 526 F.2d 1238 (5th Cir. Tex. 1976), cert. denied, 429 U.S. 834, 97 S. Ct. 98, 50 L. Ed. 2d 99 (1976).

Secured party has valid, perfected security interest where execution of new note renewing old indebtedness was not creation of new obligation; therefore, secured party takes priority over trustee in bankruptcy. In re Cantrill Constr. Co., 418 F.2d 705 (6th Cir. Ky. 1969), cert. denied, 397 U.S. 990, 90 S. Ct. 1124, 25 L. Ed. 2d 398 (1970).

42. Trustee in bankruptcy over unperfected security interest.

Where (1) purchaser of truck, who was in default on loan made by first secured creditor, borrowed money from second secured creditor to pay off first creditor's loan, (2) first creditor's lien on truck was then discharged of record, (3) second creditor, although it obtained note and security agreement covering truck, which instruments were executed on behalf of corporation of which debtor was officer, neglected (a) to effect transfer of truck's title to debtor's corporation, (b) to perfect security interest in truck by recording its lien on vehicle's title document, and (c) to record such title document with Director of Motor Vehicles, (4) debtor's corporation became insolvent, and receiver was appointed therefor, and (5) truck was sold at judicial sale, and receiver claimed that his interest in sale proceeds had priority over second secured creditor's lien on truck, court held (1) that under UCC § 9-301(1)(b) and (3), providing that unperfected security interest is subordinate to rights of one who becomes "lien creditor" without knowledge of such security interest and before it is perfected, receiver of debtor's corporation had apparent priority as a "lien creditor" because second creditor's unperfected lien on truck would yield to receiver's priority as "lien creditor" who had no knowledge of second creditor's lien, in absence of any evidence that creditors represented by receiver had any such knowledge themselves, (2) that despite receiver's apparent priority, the

Uniform Commercial Code, under UCC § 1-103, is supplemented by principles of law and equity unless such principles are displaced by any provision of the code, (3) that no particular provision of UCC Article 9 had displaced the doctrine of equitable subrogation where such doctrine was properly invocable as a matter of substantive law, and (4) that under all circumstances of case, second creditor's contention that it was entitled to be subrogated to first creditor's recorded lien before such lien was discharged, on the ground that second creditor's money was used to pay off such prior lien, should be sustained. Kaplan v. Walker, 164 N.J. Super. 130, 395 A.2d 897 (App. Div. 1978).

Trustee in bankruptcy of meat packer, as hypothetical lien creditor under UCC § 9-301(a)(2), (c), had interest superior to unperfected interest of cash sellers of cattle, but interest of trustee was subordinate to perfected security interest of meat packer's finance agency. Stowers v. Mahon, 526 F.2d 1238 (5th Cir. Tex. 1976), cert. denied, 429 U.S. 834, 97 S. Ct. 98, 50 L. Ed. 2d 99 (1976).

Secured party's failure to file financing statement in accordance with Article 9 of Code rendered its security interest in lathe subordinate to that of trustee in bankruptcy. First Bank & Trust Co. v. Post, 10 Ill. App. 3d 127, 293 N.E.2d 907 (1st Dist. 1973).

Historical society's unperfected security interest in station used by debtor railroad was not enforceable against creditor with perfected security interest arising out of recorded mortgage, nor against debtor's trustee in bankruptcy who had status of lien creditor. In re New Hope & I.R.R., 353 F. Supp. 608 (E.D. Pa. 1973).

A trustee in bankruptcy becomes a "lien creditor" from the date of the filing of the petition, and an unperfected security interest in property of the bankrupt is subordinate to the rights of the trustee. In re Ferro Contracting Co., 256 F. Supp. 89 (D.N.J. 1966), rev'd on other grounds, 380 F.2d 116 (3d Cir. N.J. 1967), cert. denied, 389 U.S. 974, 88 S. Ct. 475, 19 L. Ed. 2d 466 (1967).

The trustee in bankruptcy is a lien creditor whose rights are superior to those of an unperfected security interest holder. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

A trustee in bankruptcy claiming under the bankrupt's assignee for benefit of creditors would have an interest superior to a reclaimant's, if the reclaimant's security interests were not perfected. In re Komfo Prods. Corp., 247 F. Supp. 229 (E.D. Pa. 1965).

A trustee in bankruptcy takes priority over an unperfected security interest in the property of the bankrupt. In re Smith, 205 F. Supp. 27 (E.D. Pa. 1962).

The debtor's trustee in bankruptcy prevails over the reclamation petition of a secured creditor where the secured creditor failed to perfect his interest by a proper filing. In re Leiby, 54 Berks C.L.J. 114 (Pa 1962).

Under subsection (1)(b) of the instant section, an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor without knowledge of the security interest and before it is perfected, and a trustee in bankruptcy is such a lien creditor from the time of the filing of the petition in bankruptcy, even though he personally has knowledge of the security interest, unless all the creditors represented by him have such knowledge. In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

43. —Assignment of accounts and contract rights.

Where a manufacturer of components of military equipment, under subcontracts with primary manufacturers, borrowed money from a bank on assignments of its right to all moneys due and to become due under the subcontracts from the primary contractors, and subsequently the subcontractor was adjudicated a bankrupt, after which the subcontractor's trustee in bankruptcy sold its tools and dies to the primary contractors, the trustee did not assume the bankrupt's contracts even thought the contracts had required the bankrupt to sell its tools and dies to the primary contractors after the completion of the contracts; hence, since the sales of the tools and dies to the primary contractors were not assumptions of the contracts by the trustee in bankruptcy, the funds received by the trustee in payment for the tools and dies were not payments under the contracts which passed to the bank under its assignment, but were sales of property on which the bank had neglected to perfect a lien, under this article, and to which the bankrupt's trustee was entitled as part of the bankrupt's estate. In re Luscombe Engineering Co., 163 F. Supp. 706 (E.D. Pa. 1958), aff'd, 268 F.2d 683 (3d Cir. Pa. 1959).

The assignment in a building subcontractor's performance bond, to his surety, of all sums due and to become due to the subcontractor under his contract with the primary contractor, in the event of any abandonment, forfeiture, or breach of the subcontract by the subcontractor, was a "contract right" under § 9-301, and where not perfected under §§ 9-302 and 9-403 by appropriate recording, was invalid against a lien creditor, including a trustee in bankruptcy from the date of the filing of the petition; hence, the surety was relegated to the status of a general creditor, with no lien on funds owing from the contractor to the bankrupt and paid into court. United States ex rel. Greer v. G.P. Fleetwood & Co., 165 F. Supp. 723 (W.D. Pa. 1958).

44. —Knowledge of security interest by all creditors.

Trustee in bankruptcy is not held to have knowledge of assignment under UCC § 9-301(3) where not all the creditors had actual knowledge thereof. City of Vermillion v. Stan Houston Equip. Co., 341 F. Supp. 707 (D.S.D. 1972).

A trustee in bankruptcy has the status of a lien creditor without knowledge of a prior unperfected security interest unless all the creditors whom he represents have knowledge of the security interest, without regard to whether the trustee has actual knowledge. In re Dennis Mitchell Indus., Inc., 280 F. Supp. 433 (E.D. Pa. 1968), rev'd on other grounds, 419 F.2d 349 (3d Cir. Pa. 1969).

Unless all creditors whom trustee in bankruptcy represents have knowledge of security interest, trustee is lien creditor without knowledge within Code § 9-301(3) even though he personally has knowledge of security interest; but one taking under such trustee as purchaser at bankruptcy sale will not prevail over unperfected security interest as would trustee under Code § 9-301(1)(b), if purchaser himself has actual knowledge of security interest. In re Dennis Mitchell Indus., Inc., 280 F. Supp. 433 (E.D. Pa. 1968), rev'd on other grounds, 419 F.2d 349 (3d Cir. Pa. 1969).

If all creditors represented by debtor's assignee for the benefit of creditors had knowledge of the contents of an inadequately filed financing statement at the time the assignment was made, reclaimant holding the security interest would have a claim superior to that of the assignee and the debtor's trustee in bankruptcy, but actual knowledge on the part of the creditors is a question of fact on which reclaimant would have the burden of proof before the referee. In re Komfo Prods. Corp., 247 F. Supp. 229 (E.D. Pa. 1965).

If the right of a security creditor is not perfected the effect of knowledge of the trustee in bankruptcy of the debtor is governed by UCC § 9-301 which provides that "Unless all the creditors represented had knowledge of the security interest [the trustee] is a lien creditor without knowledge even though he personally has knowledge of the security interest." In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

45. —Six month rule.

Where (1) creditor held perfected security interest in debtor's collateral for advances made to debtor, (2) where as of date debtor filed petition in bankruptcy, debtor had fully repaid creditor for all such advances, (3) where creditor did not file any claim as an unsecured creditor in debtor's bankruptcy proceeding until over a year after such proceeding had been commenced, and (4) where more than a year after debtor filed petition in bankruptcy, creditor claimed that although its advances to debtor had all been repaid, creditor's perfected security interest still existed under UCC § 9-301(1)(b) against collateral, which by then was in possession of bankruptcy trustee, to secure performance of certain secondary liabilities covered by security agreement with debtor, court would hold (1) that debtor's payment, prior to bankruptcy, of main indebtedness secured by collateral terminated creditor's perfected security interest in collateral, and (2) that as a result, creditor was merely an unsecured creditor that was barred from recovery because of its failure to file a claim in bankruptcy proceeding within 6-months period prescribed by bankruptcy statutes. In re Apollo Travel, Inc., C.A.8 (Minn.)1977, 567 F. 2d 841

UCC § 9-403(3) requires filing of continuation statement within six months' period prior to expiration of five-year period during which original financing statement is effective; thus, where bank filed continuation statement almost two years prior to prescribed period, filing was premature and did not extend effective date of original financing statement beyond its expiration date. Facts that bank filed continuation statement pursuant to express language of UCC & 9-403(1) and that secretary of state accepted continuation statement without hesitation and without advising secured party that if statement was deemed premature, it would have no effect and would be destroyed along with original financing statement upon its expiration date, did not render it effective to support bank's petition for reclamation in bankruptcy proceeding. In re Callahan Motors, Inc., 396 F. Supp. 785 (D.N.J. 1975), rev'd, 538 F.2d 76 (3rd Cir. N.J. 1976), cert. denied, 429 U.S. 987, 97 S. Ct. 507, 50 L. Ed. 2d 598 (1976).

G. Decisions Under Former Statutes.

46. Decisions under former Code 1942 § 337.

Section [Code 1942, § 337] does not apply to the case where property subject to a purchase-money lien is acquired at an execution sale by one who had no knowledge of the lien's existence. Motor Parts & Bearing Co. v. O.K. Rubber Welders, Inc., 251 Miss. 326, 169 So. 2d 444 (1964).

A lien under this section ceases to exist when the personal property subject to it is purchased at execution sale by one who has no knowledge of the existence of the lien. Motor Parts & Bearing Co. v. O.K. Rubber Welders, Inc., 251 Miss. 326, 169 So. 2d 444 (1964).

An auctioneer who, in the regular course of his business, receives cattle from a cattle buyer and sells them for him on commission, and pays over the proceeds thereof, without notice, actual or constructive, of the seller's lien, is not liable to the seller as for a conversion, although the cattle buyer acts fraudulently in the matter. Dixie Stock Yard, Inc. v. Ferguson, 192 Miss. 166, 4 So. 2d 724 (1941).

Where a stockyard company, while not having acquired title to cattle purchased by a dealer and placed in its yards, had possession of them as bailee, factor or auctioneer, at a time when a purchase money lien could have been enforced against them, and then aided in the sale and disposition of the cattle to third persons against whom the lien could not be enforced, receiving a commission from the proceeds of the sale and diverting the remainder thereof to other purposes than a discharge of the lien, the company, if it had notice of the lien, would be liable in an appropriate action for the value of the cattle. Dixie Stock Yard, Inc. v. Ferguson, 192 Miss. 166, 4 So. 2d 724 (1941).

The lien given by this statute is good as against the purchaser's trustee in bankruptcy. Commercial Credit Co. v. Davidson, 112 F.2d 54 (5th Cir. 1940).

The lien expires when the property passes to a trustee in bankruptcy exercising the rights and remedies of a judgment creditor. In re Monticello Veneer Co., 2 F. Supp. 27 (S.D. Miss. 1933).

Fans coming into hands of buyer's receiver remained subject to purchase-money lien. Weiss, Dreyfous & Seiferth, Inc. v. Natchez Inv. Co., 166 Miss. 253, 140 So. 736 (1932).

Vendor's lien on lumber sold is lost when lumber passes to bona fide purchaser from vendee without notice of lien. Tabb v. People's Bank & Trust Co., 160 Miss. 22, 133 So. 137 (1931).

Assignee for benefit of creditors in charge of assignor's goods, who has made inventory and notified all creditors of his appointment and to file claims, may hold possession of the goods against a lien for the purchase-price. Goodbar & Co. v. Knight, 89 Miss. 124, 42 So. 539 (1907).

Where property has been taken under a writ of seizure a voluntary surrender of such property by defendant to a third person having no valid prior right thereto, subsequent to the levy of the writ and to the execution of a forthcoming bond, cannot defeat the lien of the plaintiff in the writ nor release the surety from its obligation for the forthcoming of the property. Fidelity & Deposit Co. v. B.F. Sturtevant Co., 86 Miss. 509, 38 So. 783, 109 Am. St. R. 716 (1905).

47. Decisions under former Code 1942 § 5080-08.

Where an automobile dealer and a finance company choose to do business under the method provided by the Uniform Trust Receipts Act, the finance company cannot assert that it has a purchase money lien under Code 1942, § 337 which is prior to any lien created by the levy of execution by a judgment creditor. Murdock Acceptance Corp. v. Woodham, 208 So. 2d 56 (Miss. 1968).

48. Decisions under former Code 1942 § 5080-09.

Where a trustee-dealer sold a large tractor at retail in the ordinary course of business and the purchaser executed a conditional sales contract, regular on its face, which was purchased for value and in good faith by a finance company, title to the tractor under the provisions of this section [Code 1942, § 5080-09] became vested in the finance company. McDill v. City of Moss Point, 208 So. 2d 757 (Miss. 1968).

A finance company which purchased for value and in good faith a conditional sales contract, representing the purchase price of a floor-planned tractor which the trustee-dealer had sold in the ordinary course of business, became vested with title to the tractor, entitled to prevail as a third party claimant in a replevin action brought against the purchaser by the entruster which held a trust receipt on the machine. McDill v. City of Moss Point, 208 So. 2d 757 (Miss. 1968).

Where a lien creditor of the trustee secured the issuance of process which resulted in the attachment of a levy on floor-planned automobiles on the day before the entruster filed his financing statements for record, the entruster's security interest was void as against the lien creditor. Murdock Acceptance Corp. v. Woodham, 208 So. 2d 56 (Miss. 1968).

A purchaser at execution sale for a grossly inadequate price does not acquire good title as against a trustor whose trust receipt has not been filed. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484 (1962).

The trust receipts act proceeds on the theory that the entruster is entitled to protection only against honest insolvency of the trustee, and dishonest action of the trustee is a credit risk and bona fide purchasers are to be protected against the entruster who has taken that risk by entrusting. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

Where a trustee who had purchased autos on a floor planning agreement, and had traded an auto with a dealer and where the only instrument as to the floor planning agreement was a trust receipt financial statement which was recorded and which provided that the entruster expected to finance the trustee, a buyer who purchased the automobile from the dealer had not constructive notice of the arrangement and took the automobile free from any security interest. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

Where a trust agreement permitted the trustee to sell an automobile in the ordinary course of retail sale the word retail is to be counterdistinguished from bulk sales, which, as to requirement of notice to creditors of the seller, was provided for under the bulk sales law. Commercial Credit Corp. v. General Contract Corp., 223 Miss. 774, 79 So. 2d 257 (1955).

The lien expires when the property passes to a trustee in bankruptcy exercising the rights and remedies of a judgment creditor. In re Monticello Veneer Co., 2 F. Supp. 27 (S.D. Miss. 1933).

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of statute respecting sale, assignment or transfer of retail instalment contracts. 10 A.L.R.2d 447.

Coverage of "nonrecording" or "nonfiling" insurance against loss from failure to record chattel mortgage, conditional sale, or other security instrument. 51 A.L.R.2d 325.

Priority, as between holder of unfiled or unrecorded chattel mortgage who secures possession of goods or chattels, and subsequent purchaser or encumbrancer. 53 A.L.R.2d 936.

Priority as between mechanic's lien and purchase-money mortgage. 73 A.L.R.2d 1407.

Priority as between seller or conditional seller of personalty and claimant under after-acquired property clause of mortgage or other instrument. 86 A.L.R.2d 1152.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 75, 76 et seq.

6 Am. Jur. 2d, Attachment and Garnishment § 458 et seq.

9 Am. Jur. 2d, Bankruptcy §§ 624, 688, 689, 692, 704.

13 Am. Jur. 2d, Carriers §§ 349-350.

68A Am. Jur. 2d, Secured Transactions §§ 695-705.

78 Am. Jur. 2d, Warehouses §§ 51, 55 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:341-9:346 (priorities of security interests; over unperfected interests).

CJS. 6A C.J.S., Assignments §§ 98-102, 104.

7 C.J.S., Attachment §§ 216, 229.

8A C.J.S., Bankruptcy § 263.

13 C.J.S., Carriers §§ 384-389.

79 C.J.S., Secured Transactions § 88 et seq.

38 C.J.S., Garnishment §§ 229-232.

72 C.J.S., Pledges § 24.

Law Reviews. Williamson and Redfern, Lender liability in Mississippi: Part II loan commitments and agreements. 59 Miss. L. J. 71, Spring, 1989.

§ 75-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

SOURCES: Former 1972 Code § 75-9-318 [Codes, 1942, § 41A:9-318; Laws, 1966, ch. 316, § 9-318; Laws, 1977, ch. 452, § 23, eff from and after April 1, 1978] is now found in comparable provisions enacted at §§ 75-9-404 through 75-9-406 by Laws, 2001, ch. 495, § 1. Present § 75-9-318 was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-319. Rights and title of consignee with respect to creditors and purchasers.

(a) Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-320. Buyer of goods.

(a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family, or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Section 75-9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under Section 75-9-313.

(f) Notwithstanding subsection (a), a secured party may not enforce a security interest in farm products against a buyer, commission merchant or selling agent who purchases or sells farm products in the ordinary course of business from or for a person engaged in farming operations unless the secured party has complied with the regulations issued by the Secretary of state under subsection (g) or unless the buyer, commission merchant or selling agent has received from the secured party or seller written notice of the security interest which complies with the requirements of Section 1324 of the Food Security Act of 1985, as now enacted or as hereafter may be amended.

(g) The Secretary of State shall issue regulations implementing a central filing system relating to farm products which conforms with the requirements of Section 1324 of the Food Security Act of 1985, as now enacted or as hereafter may be amended. The Secretary of State is authorized to set reasonable fees to defray the costs of the central filing system established pursuant to this section. At least thirty (30) days prior to the promulgation of such regulations or any amendments thereto, the Secretary of State shall give notice of such regulations and/or amendments to all licensed attorneys in the State of Mississippi.

SOURCES: Derived from former 1972 Code § 75-9-307 [Codes, 1942, § 41A:9-307; Laws, 1966, ch. 316, § 9-307; Laws, 1977, ch. 452, § 19; Laws, 1986, ch. 482, § 1, eff from and after December 24, 1986 (the date Section 1324 of the Food Security Act of 1985 became effective)] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Rights and title acquired by purchaser of goods, see § 75-2-403.

Document of title as conferring no rights against person having prior legal interest in absence of delivery of goods or document with power of disposition under this Code, see § 75-7-503(a).

Federal Aspects — Provisions of Section 1324 of the Food Security Act of 1985, see 7 USCS § 1631.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-307.

A. In General.

6. Generally.
7. Authorized sales distinguished.

B. Type of Collateral.

8. In general.
9. Inventory.
10. —Held for sale.
11. —Dealer in goods of that kind.
12. Farm products.

C. Buyers In Ordinary Course.

13. In general.
14. Sale.
15. Persons protected.
16. —Dealer-purchaser.
17. —Bulk purchaser.
18. Good faith.
19. Giving value.
20. Knowledge of security interest.
21. Knowledge of violation.
22. When status arises.
23. Effect of title defects.
24. Effect of federal law.
25. Security interests as to which buyer takes free.
26. Security interests as to which buyer takes subject.
27. Conversion action or the like.

D. Buyers of Consumer Goods.

28. In general; transactions contemplated.
29. Motor vehicles distinguished.
30. Knowledge.
31. Personal, family, or household purpose.
32. Farm products (prior to 1977 amendment).

E. Buyers not in Ordinary Course; Future Advances.

33. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-307.

A. In General.

6. Generally.

UCC § 9-307(2) gives protection to the buyer of consumer goods against a perfected security interest under specified circumstances. The statute is limited in its application to transactions between a consumer seller and a consumer buyer, and the goods must be consumer goods in the hands of both buyer and seller. However, a buyer does not take free of a security interest under UCC § 9-307(2) where, prior to the purchase, a financing statement has been filed with respect to the security interest. Memphis Bank & Trust Co. v. Pate, 362 So. 2d 1245 (Miss. 1978).

UCC § 9-307 was generally designed to insure compliance by retailer under agreement with his inventory financer not to sell goods without financer's permission. If retailer sells goods without financer's permission, financer's recourse remains against noncomplying retailer and not buyer. Adams v. City Nat'l Bank & Trust Co., 565 P.2d 26 (Okla. 1977).

7. Authorized sales distinguished.

Judgment for plaintiff affirmed in replevin action brought by boat owner against prior owner and against bank claiming security interest in boat arising in connection with original sale; held, bank and original buyer had waived their UCC protection by authorizing boat dealer on their behalf to sell plaintiff the boat in issue. Pieper v. First Nat'l Bank, 453 S.W.2d 926 (Mo. 1970).

Code § 9-307(1) is inapplicable to sale of secured chattel which is authorized by secured party. Draper v. Minneapolis-Moline, Inc., 100 Ill. App. 2d 324, 241 N.E.2d 342 (3d Dist. 1968).

B. Type of Collateral.

8. In general.

Where bank which had security interest in crops grown on farm authorized sale of corn crop, lien was lost; and buyer who made final payment for corn by check payable only to owner of farm had no obligation or liability to bank. Farmers Nat'l Bank v. Ceres Land Co., 32 Colo. App. 290, 512 P.2d 1174 (1973).

9. Inventory.

Perfected security interest in cattle feed did not, in and by itself, extend under UCC § 9-315(1) and UCC § 9-307(1) to cattle which ate such feed since feed, after being eaten, not only lost its identity under UCC § 9-315(1), but also ceased to exist within meaning of UCC § 9-315(1) and UCC § 9-307(1). Moreover, cattle which ate feed did not constitute "proceeds" thereof within meaning of UCC § 9-306(1) and (2). First Nat'l Bank v. Bostron, 39 Colo. App. 107, 564 P.2d 964 (1977).

Under UCC § 9-307(1) where buyer purchased new automobile from inventory of dealer in ordinary course of business, buyer took free of security interest held by bank under floor-planning arrangement, even though perfected and buyer knew of terms of security agreement. F & M Bank & Trust v. Ksenych, 252 N.W.2d 220 (S.D. 1977).

Auto purchase made from auto dealer's inventory in ordinary course of business without notice of trust security agreement between dealer and bank; held, buyer acquired title free of bank's trust security lien. Correria v. Orlando Bank & Trust Co., 235 So. 2d 20 (Fla. App. 1970).

Buyer of "inventory" auto in ordinary course of business took free of security interest of car dealer's chattel mortgagee, even though financing statement outlining chattel mortgage had been duly recorded. Franklin Inv. Co. v. Homburg, 252 A.2d 95 (D.C. 1969).

Where security agreement gave lender security interest in manufacturer's inventory of veneer and all finished plywood, whenever acquired, and manufacturer delivered inventory to supplier, accepting plywood on payment, latter delivery was not sale in ordinary course of business and as such could not under Code § 9-307(1) extinguish lender's security interest in plywood. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

10. —Held for sale.

In action by buyer of airplane for declaratory relief concerning right to plane, where evidence showed (1) that plane was bought by plaintiff in ordinary course of business from defendant aircraft dealer, (2) that seller had entered into security agreement with defendant finance company, which loaned money to seller on security of seller's inventory, (3) that under such security agreement, seller had express power to sell inventory, including plane sold to plaintiff, (4) that secured party's lien was to apply to proceeds of any aircraft sales by seller, (5) that if seller should default by failing to hold such proceeds in trust for secured party, secured party would have rights and remedies available under Pennsylvania Uniform Commercial Code, (6) that secured party recorded security agreement with F.A.A. Aircraft Registry before plane was sold to plaintiff, (7) that seller failed to hold proceeds of sale of plaintiff's plane in trust for secured party, and (8) that on discovering such default, secured party notified plaintiff that secured party was asserting lien on plane superior to title of plaintiff, court held (1) that since security agreement was delivered in Pennsylvania, although federal recording of such agreement established that plaintiff had had notice of creditor's security interest in plane, Pennsylvania law determined validity of creditor's lien as against plaintiff, (2) that under Pennsylvania UCC § 9-307(1), a purchaser in the ordinary course of business, such as plaintiff in present action, prevails against creditor of seller, even if creditor's security agreement should not contain an express power of sale (which it did contain in present case), (3) that terms of creditor's security agreement with seller of plane should be given effect, and (4) that under those terms, creditor's lien was transferred from plane to proceeds of plane's sale, which seller did not remit to creditor, and plaintiff buyer took title to plane free and clear of creditor's lien under its security agreement. Sanders v. M.D. Aircraft Sales, Inc., 575 F.2d 1086 (3d Cir. Pa. 1978).

Where Georgia Motor Vehicle Certificate of Title Act expressly provided that it did not apply to or effect security interest in vehicle that was created by manufacturer or dealer who held vehicle for sale, and that buyer in ordinary course of trade from manufacturer or dealer would take vehicle free of such security interest, perfection of security interest in dealer's floor-planned vehicle would come under Georgia Uniform Commercial Code and priority as to such security interest would be governed by Georgia UCC § 9-307(1), which provides that buyer in ordinary course of business takes free of security interest created by his seller, even though such security interest is perfected and buyer knows of its existence. Rome Bank & Trust Co. v. Bradshaw, 143 Ga. App. 152, 237 S.E.2d 612 (1977).

In action by manufacturer of mobile home against dealer and purchaser of unit arising when dealer failed to pay manufacturer purchase price, mobile home fell within definition of "goods" under UCC § 2-105 and purchaser was entitled to protection from manufacturer's claim under UCC § 9-307(a) where purchaser, who took title from merchant entrusted with goods under UCC §§ 2-401 and 2-403, qualified as buyer in ordinary course of business under UCC § 1-201(9), notwithstanding purchaser's failure to request certificate of title of purchase. Apeco Corp. v. Bishop Mobile Homes, Inc., 506 S.W.2d 711 (Tex. Civ. App. 1974), writ ref'd n.r.e., (June 12, 1974).

11. —Dealer in goods of that kind.

A buyer takes free of a security interest in goods created by a seller who is in the business of selling goods of that kind, even if the interest is perfected, if the buyer merely knows that there is a security interest which covers the goods, but takes subject to the interest if he knows, in addition, that the sale is in violation of some term in the security agreement not waived by the words or conduct of the secured party (Uniform Commercial Code, § 1-201, subd 9; § 9-307, subd 1), although it is not incumbent upon the buyer to make a search for any possible security interests; and, a buyer who takes free of a perfected security interest takes free of an unperfected one as well. European-American Bank & Trust Co. v. Sheriff of the County of Nassau, 97 Misc. 2d 549, 411 N.Y.S.2d 851 (1978).

Where defendant pawnshop purchased television sets from debtor who was not in business of selling television sets, and later resold them, defendant pawnshop was liable to secured party with purchase money security interest, despite fact that security interest was never recorded. White-Sellie's Jewelry Co. v. Goodyear Tire & Rubber Co., 477 S.W.2d 658 (Tex. Civ. App. 1972).

12. Farm products.

Following acquiescence in, and sale of, the collateral, the farm-products lender stands on the same footing as the inventory financer. Under UCC § 9-306(2) and UCC § 9-307(1), neither has a continuing security interest in the collateral. However, each retains a threshold of protection because his security interest attaches to the proceeds of the sale. Weisbart & Co. v. First Nat'l Bank, 568 F.2d 391 (5th Cir. Tex. 1978).

Where debtor was engaged in business of buying cattle, feeding and fattening them, and selling them for slaughter, debtor was engaged in "farming operations" and cattle were "farm products," so that sale to buyer in ordinary course of business would not cut off secured party's security interest in debtor's livestock. Baker Prod. Credit Ass'n v. Long Creek Meat Co., 266 Or. 643, 513 P.2d 1129 (1973).

Code allows security interest in farm products to follow collateral through succession of purchases; and although after slaughtering cattle sold by debtor to slaughtering company were no longer "farm products" but "inventory," purchaser from slaughtering company would not take free of secured party's security interest in debtor's livestock because it was not one "created by his seller." Baker Prod. Credit Ass'n v. Long Creek Meat Co., 266 Or. 643, 513 P.2d 1129 (1973).

Buyer of soybeans cannot claim "buyer in ordinary course of business" protection under UCC § 9-307(1) where soybean seller was a person engaged in farming operations. United States v. Hughes, 340 F. Supp. 539 (N.D. Miss. 1972).

Since Code § 9-307(1) specifically excepts from that exaulted class of buyers in ordinary course of business, "a person buying farm products from a person engaged in farming operations", and since secured party had perfected security interest prior to purchase by buyer, secured party could enforce security interest in proceeds of certain peanuts which debtor had sold to buyer and which buyer had resold. United States v. McCleskey Mills, Inc., 409 F.2d 1216 (5th Cir. Ga. 1969).

By excluding "farm products" from the classifications of "equipment" and "inventory," and by expressly providing that a buyer in the ordinary course of business of farm products from a person engaged in farming operations does not take free of a security interest created by the seller, the draftsmen of the Code apparently intended to freeze the agricultural mortgagee into the special status he had achieved under pre-code case law. Clovis Nat'l Bank v. Thomas, 77 N.M. 554, 425 P.2d 726 (1967).

C. Buyers In Ordinary Course.

13. In general.

In marital property-division proceeding, trial court had authority under UCC § 9-311, providing that debtor's rights in collateral may be voluntarily or involuntarily transferred by judicial process; to direct husband to transfer title to bonds, which had been pledged as security for loan, to wife. However, any title that was involuntarily transferred by judicial order would be subject, under UCC § 9-306(2), to security interests created by the pledge, since wife, as party to suit in which such transfer was made, was not buyer in ordinary course of business under UCC §§ 1-201(9) and 9-307(1) who could take collateral (bonds) free of pledgee's security interest therein. Goetz v. Goetz, 567 S.W.2d 892 (Tex. Civ. App. 1978).

Where (1) plaintiff purchased used car from dealer, (2) such car, prior to plaintiff's purchase, was subject of security agreement that defendant secured party had perfected by filing of financing statement, and (3) original purchaser of car sold it to third person, who in turn resold it to dealer from whom plaintiff purchased it, court held (1) that although plaintiff was buyer in ordinary course of business under UCC § 9-307(1), he was not protected in his purchase because security interest in car had been created by original purchaser of car, instead of plaintiff's seller, and (2) that plaintiff was also not protected under UCC § 9-307(2), since secured party had filed financing statement covering car before plaintiff purchased it. Lindsley v. Financial Collection Agencies, Inc., 97 Misc. 2d 263 (1978).

Under UCC § 9-307(1), the secured party's knowledge or lack of knowledge, whether actual or constructive, is immaterial to the rights of a buyer in the ordinary course of business. In other words, the status of a buyer in the ordinary course of business does not depend on what the secured party knew. Antigo

Co-op Credit Union v. Miller, 86 Wis. 2d 90, 271 N.W.2d 642 (1978).

UCC § 9-307(1) applies to both perfected and unperfected security interests in circumstances where the buyer buys in the ordinary course of business. Antigo Co-op Credit Union v. Miller, 86 Wis. 2d 90, 271 N.W.2d 642 (1978).

Under UCC §§ 9-307(1) and 9-104(a), a security interest in an airplane held as part of a dealer inventory, which interest was duly recorded with the F.A.A. as required by federal law (see 49 USCS § 1403), is not superior to the rights of a purchaser for value from the dealer without actual notice of a security interest. In such case, although congress, by providing a federal system for registration of conveyances and liens affecting title to aircraft, did preempt that field and render state recording statutes inapplicable to such title instruments, the federal statute did not remove from resolution under state law questions concerning the validity of such title documents, actual notice, good-faith-purchaser status, and similar matters. Bank of Hendersonville v. Red Baron Flying Club, Inc., 571 S.W.2d 152 (Tenn. Ct. App. 1977), cert. denied, 439 U.S. 1089, 99 S. Ct. 872, 59 L. Ed. 2d 56 (1972).

Defendant finance company did not acquire security interest in two vehicles superior to that of plaintiff bank, by virtue of automobile dealer's execution and filing of inventory security agreements in favor of the defendant covering vehicles, where vehicles had originally been sold by dealer and conditional sales contracts were assigned to plaintiff subject to recourse contract with dealer, where plaintiff had at all times had possession of certificates of ownership for vehicles and was listed as legal owner thereon, where dealer had possession of vehicles as result of their repossession by plaintiff pursuant to recourse agreement following purchasers' defaults, and where plaintiff had demanded, unsuccessfully, that dealer pay balance due on conditional sales contracts as provided by recourse agreement; under UCC § 9-204, dealer, as debtor, did not acquire rights in subject motor vehicles sufficient to transfer valid security interest to defendant; nor could defendant, by advancing flooring money to dealer be considered buyer in ordinary course of business, but was rather financing agency only, excluded from protection created by UCC § 9-307. Mother Lode Bank v. GMAC, 46 Cal. App. 3d 807 (3d Dist. 1975).

Insurance company which, as part of claim settlement, obtained title to car covered by security interest, was liable to secured party for unpaid balance under UCC § 9-201, even though car was total loss and had no value; insurance company was not buyer of automobiles in ordinary course of business under UCC § 9-307. GMAC v. Allstate Ins. Co., 77 Misc. 2d 849 (1974).

"Buyer in ordinary course of business" does not include person buying farm products from person engaged in farming operations, under Georgia UCC § 9-307 exempting commission merchants of agricultural products from liability where sale is made in ordinary course of business without actual notice of security. United States v. Big Z Whse., 311 F. Supp. 283 (S.D. Ga. 1970).

Buyer in ordinary course is not protected by UCC § 9-307, where security interest in motor vehicle was one created by party other than immediate seller. Muir v. Jefferson Credit Corp., 108 N.J. Super. 586, 262 A.2d 33 (L. Div. 1970).

The finance company to which the seller has assigned the sales contract made with a buyer in ordinary course prevails over the lender financing the seller. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

A lien in after-acquired inventory items created by a security agreement under § 9-204(3), if filing requirements are complied with, may be superior to a subsequently acquired contract creditor's lien or other third party claim except those of buyers in ordinary course of business under § 9-307(1) and holders of perfected purchase money security interest under § 9-312(3). Rosenberg v. Rudnick, 262 F. Supp. 635 (D. Mass. 1967).

The policy of the Code is to favor the purchaser from inventory as against the creditor claiming a security interest in the goods. Select Motors, Inc. v. Kemp, 42 Pa. D. & C.2d 603 (1967).

14. Sale.

Buyers of mobile home who executed retail installment sales contract and security agreement (1) were "buyers in the ordinary course of business" under Arizona UCC § 9-307(1), even though they did not make down payment on home or take possession of it at time of entering into contract, (2) buyers' binding promise to pay was sufficient to meet requirements of Arizona UCC § 9-203(1), as amended in 1972, for attachment of security interest, and (3) security interest in home attached when buyers executed installment-purchase agreement and security agreement with seller. Rex Fin. Corp. v. Mobile Am. Corp., 119 Ariz. 176, 580 P.2d 8 (1978).

Where truck dealer ordered two trucks from manufacturer, trucks were delivered under "floor plan" arrangement with manufacturer whereby dealer executed note and security agreement covering trucks, which was assigned to credit company, where purchaser executed two security agreements and notes for purchase of trucks which were assigned by dealer to purchaser's finance company, but where delivery of trucks to purchaser was delayed and, in fact, purchaser never made cash down payment and never actually took possession of trucks, there was, nonetheless, sale of trucks when purchaser executed security agreements and notes; thus, security interest obtained by purchaser's lender took priority over security interest in trucks held by dealers credit company. International Harvester Credit Corp. v. Associates Fin. Servs. Co., 133 Ga. App. 488, 211 S.E.2d 430 (1974).

15. Persons protected.

The Federal Aviation Act (see 49 USCS § 1403 et seq.), which provides a system for recordation of conveyances affecting title to or security interests in civil aircraft of the United States, does not preempt the rule prescribed by UCC § 9-307(1) that a buyer in ordinary course of business takes chattels free of a security interest created by his seller. Haynes v. GECC, 582 F.2d 869 (4th Cir. Va. 1978).

Sale of unfinished textile fabrics by converter (i.e., one who finishes textiles into dyed and patterned fabrics) to another converter was in ordinary course of first converter's business within meaning of UCC § 9-307(1), even though predominant business purpose of converters was converting of unfinished textiles into finished fabrics, and thus second converter took fabric free from manufacturer's security interest in textiles, although manufacturer's security interest was perfected by possession of goods under UCC § 9-305, where it was shown that converters often purchased unfinished textiles in excess of their requirements, selling such excess through brokers to other converters, and that converters buy such goods if price is satisfactory or particular goods are not available from manufacturers, both of which conditions were satisfied in present case. Tanbro Fabrics Corp. v. Deering Milliken, Inc., 39 N.Y.2d 632, 350 N.E.2d 590 (1976).

In action by bank against purchaser of sail boat for conversion of bank's security interest in boat, evidence was sufficient to support finding that seller was dealer in boats where loan application showed that seller used business name, seller's wife said he was in business of selling boats using that name, bank knew he had boats at another location, seller held himself out to general public as dealer at boat show and represented to witness that he was dealer, seller received proceeds in checks made out to business name, order form of boat manufacturer showed seller's business as salesman, and manufacturer honored sale of boat by performing warranty work for purchaser; thus, purchaser was buyer in ordinary course of business pursuant to UCC § 1-201(9) and was entitled to protection of UCC § 9-307(1), which defeated bank's claim. Kaw Valley State Bank v. Stanley, 514 S.W.2d 42, 73 A.L.R.3d 333 (App. 1974).

Where mobile home buyers signed agreement to purchase mobile home from dealer, but dealer, was unable to deliver specified mobile home because it was damaged by rain, delivered substitute mobile home, which was subject to security interest held by corporation that financed dealer's inventory, buyers were buyers of substituted mobile home in ordinary course of business under UCC § 1-201(9) and were protected under UCC § 9-307(1) against enforcement of corporation's security interest. Black v. Schenectady Disct.

Corp., 31 Conn. Supp. 521, 324 A.2d 921 (1974).

A buyer from inventory prevails over a person lending money to the automobile dealer where at the time of the purchase the title to the automobile was represented by a blank certificate which showed the ownership still held by a former dealer although this form of certificate was illegal under the local law, which blank certificate was held by the seller, and it was only after the sale was made to the buyer that a certificate was issued which described the dealer as the owner and noted an encumbrance in favor of the lender. Select Motors, Inc. v. Kemp, 42 Pa. D. & C.2d 603 (1967).

16. —Dealer-purchaser.

Under UCC § 9-307(1) and § 1-201(9), buyer of collateral in ordinary course of business took free of security interest therein where secured party did not know that debtor was in business of selling goods of that kind, even though security interest was perfected by proper execution and filing of financing statement. Antigo Co-op Credit Union v. Miller, 86 Wis. 2d 90, 271 N.W.2d 642 (1978).

Where automobile dealer financed his used car inventory through floor plan arrangement with finance company and, under side arrangement with second automobile dealer, satisfied his obligations to finance company by assigning used cars to second dealer, who would then issue its note to finance company in release of first dealer's note, but such cars were frequently left on first dealer's lot and sold by him on commission basis, and where first automobile dealer then entered into agreement with credit corporation to finance his new car inventory and executed security agreement in favor of credit corporation covering his inventory, including, inter alia, his used car inventory: (1) Credit corporation acquired perfected security interest in first dealer's used car inventory; (2) security interest was not waived by clause in security agreement providing that private sale of chattel to dealer in such types of chattels for amount originally paid by dealer for such chattel or at lesser fair price would be "commercially reasonable disposition thereof," nor was it waived by fact that credit corporation treated dealer's used car business as completely separate from his new car business which credit corporation was financing; (3) sales of used cars to second dealer, made at arm's length, without fraud and at fair price, were sales in ordinary course of business, and, hence, second dealer acquired title to such cars free of security interest. Weidinger Chevrolet, Inc. v. Universal C.I.T. Credit Corp., 501 F.2d 459 (8th Cir. Mo. 1974), cert. denied, 419 U.S. 1033, 95 S. Ct. 516, 42 L. Ed. 2d 309 (1974).

Automobile dealers who purchased two new cars from another dealer may be buyers in the ordinary course of business and entitled to regain them from a finance company which repossessed the vehicles while they were still in the possession of the seller. Sherrock v. Commercial Credit Corp., 290 A.2d 648 (Del. 1972).

The purchase by an automobile dealer from another automobile dealer of a new unregistered motor vehicle that is subject to a security interest created by the seller is governed by the provisions of the Uniform Commercial Code that protect a buyer in the ordinary course of business. The fact that the transaction was between dealers and at wholesale does not preclude the buyer's status as a buyer in the ordinary course of business, but whether the sale was in the ordinary course of business presents a mixed question of law and fact which precludes summary judgment. Associates Disct. Corp. v. Rattan Chevrolet, Inc., 462 S.W.2d 546 (Tex. 1970).

A dealer may be a buyer protected by UCC § 9-307. C. Jon Dev. Corp. v. Pand-Rorsche Corp., 69 Ill. App. 2d 469, 217 N.E.2d 416 (1st Dist. 1966).

17. —Bulk purchaser.

In bank's suit to have security interest in used-car dealer's inventory declared to be first and prior security interest as against interests of three persons to whom such inventory was transferred, where evidence showed that bank's security interest was perfected by filing, covered future advances, and gave bank security interest in all present and after-acquired property and proceeds; that one transferee took trust receipts and titles to specific vehicles to secure loans made to dealer and entered into security agreement granting security interest in vehicles identified in trust receipts, which agreement was filed after filing of bank's security agreement; that second transferee took trust receipts as security for loans made to dealer, but did not enter into security agreement with dealer; and that third transferee's purchase for resale of over half of dealer's inventory may have been financed by first transferee, (1) under UCC § 9-110, description of collateral in bank's security agreement included all of dealer's inventory and proceeds therefrom; (2) under UCC § 9-205, alleged failure of bank to supervise dealer's inventory properly could not constitute basis for denying equitable relief to bank; (3) security interest of first transferee was junior to bank's security interest because it was perfected after perfection of bank's interest; (4) security interest of second transferee was junior to bank's security interest because it was never perfected; and (5) security interest of third transferee was also subject to bank's security interest because such transferee was bulk purchaser under UCC § 1-201(9) and not buyer in ordinary course of business under UCC § 9-307(1). Community Bank v. Jones, 278 Or. 647, 566 P.2d 470 (1977).

Transferee of furniture store inventory was transferee in bulk under UCC § 6-102, rather than buyer in ordinary course of business under UCC § 9-307(1), and, having failed to request transferor to furnish list of creditors as required by UCC § 6-104(1), was subordinate to rights of secured party who had prior unperfected security interest in inventory where furniture transferred clearly represented entire inventory of transferor, where transferor was retail furniture store whose principal business was sale of merchandise from stock, and where transfer was not in ordinary course of transferor's business; although transferor was retail outlet owned by furniture wholesaler, for purposes of determining whether sale was major part of inventory of enterprise within meaning of UCC § 6-102(1), only retail outlet would be considered since transferee's dealings with transferor concerned only retail outlet and its inventory, and retail outlet was, at all times, considered separate entity. National Bank v. Frydlewicz, 67 Mich. App. 417, 241 N.W.2d 471 (1976).

18. Good faith.

Buyer who purchased three mobile homes from mobile home dealer was not buyer in "the ordinary course of business" and was not acting "in good faith and without knowledge" when he purchased mobile homes where buyer was fully aware that secured party had floor planned and financed homes and held security interest in each home and where buyer bought three homes from dealer because he had ascertained by his own investigation that he was buying them at unusually low price. Rex Fin. Corp. v. Marshall, 406 F. Supp. 567 (W.D. Ark. 1976).

Where buyers purchased automobiles in good faith, without knowledge that sale was in violation of secured party's security interest in automobile dealer's inventory, from dealer who was in business of selling automobiles, for present value, i.e., cash or present exchange of other property, under UCC § 9-307(1) such buyers took free of secured party's security interest. Cunningham v. Camelot Motors, Inc., 138 N.J. Super. 489, 351 A.2d 402 (1975).

Commercially prudent tractor merchant may not purchase tractor from another dealer and thereby acquire title free of any prior recorded security interest without first making good faith inquiry as to existence of such previously perfected interest. Swift v. J.I. Case Co., 266 So. 2d 379 (Fla. App. 1972), cert. denied, 271 So. 2d 147 (Fla. 1972).

Status as "buyers in the ordinary course of business" is to be determined by Article 1 definition of "good faith" rather than by Article 2 standard of "reasonable commercial standard of fair dealing." Sherrock v. Commercial Credit Corp., 290 A.2d 648 (Del. 1972).

"Buyer in ordinary course of business" status within UCC § 9-307(1) is not to be determined by Article 2 test of "reasonable commercial standard of fair dealing", even where merchant buyer is involved, but by Article 9 definition, as set forth in UCC § 1-201(19), which sets up test of honesty in fact in conduct of transaction concerned. Sherrock v. Commercial Credit Corp., 290 A.2d 648 (Del. 1972).

Evidence raised substantial fact issue precluding summary judgment as to whether dealer had acted in commercially reasonable manner, in action by dealer, who had bought autos from another dealer and who had paid purchase price therefor before delivery, to recover from credit corporation claiming security interest under floor plan financing arrangement. Sherrock v. Commercial Credit Corp., 269 A.2d 407 (Del. Super. 1970).

19. Giving value.

Where (1) bank, which had loaned money to debtor, held unperfected security interest in automobile put up by debtor as collateral, (2) debtor, after default in repayment of loan, fraudulently obtained duplicate title to such vehicle and assigned his joint interest therein to his sister, and (3) such assignment was made gratuitously and without sister's knowledge, court held that sister was not buyer "for value" under UCC § 9-307(2) and did not take debtor's joint interest in vehicle free from bank's unperfected security interest therein. First Westside Nat'l Bank v. Llera, 176 Mont. 481, 580 P.2d 100 (1978), overruled on other grounds, 259 Mont. 117, 855 P.2d 105 (1993).

Where buyers purchased automobiles in good faith, without knowledge that sale was in violation of secured party's security interest in automobile dealer's inventory, from dealer who was in business of selling automobiles, for present value, i.e., cash or present exchange of other property, under UCC § 9-307(1) such buyers took free of secured party's security interest. Cunningham v. Camelot Motors, Inc., 138 N.J. Super. 489, 351 A.2d 402 (1975).

20. Knowledge of security interest.

A buyer takes free of a security interest in goods created by a seller who is in the business of selling goods of that kind, even if the interest is perfected, if the buyer merely knows that there is a security interest which covers the goods, but takes subject to the interest if he knows, in addition, that the sale is in violation of some term in the security agreement not waived by the words or conduct of the secured party (Uniform Commercial Code, § 1-201, subd [9]; § 9-307, subd [1]), although it is not incumbent upon the buyer to make a search for any possible security interests; and, a buyer who takes free of a perfected security interest takes free of an unperfected one as well. European-American Bank & Trust Co. v. Sheriff of the County of Nassau, 97 Misc. 2d 549 (1978).

Under UCC § 9-307(1) where buyer purchased new automobile from inventory of dealer in ordinary course of business, buyer took free of security interest held by bank under floor-planning arrangement, even though perfected and buyer knew of terms of security agreement. F & M Bank & Trust v. Ksenych, 252 N.W.2d 220 (S.D. 1977).

Buyer of airplane in ordinary course of business takes free of security interest created by seller, even though it is perfected and buyer knows of its existence. Suburban Trust & Sav. Bank v. Campbell, 19 Ohio Misc. 74, 250 N.E.2d 118 (1969).

Where plaintiff bought truck from a merchant in the ordinary course of business, without knowledge of a security agreement entered into by the seller and later assigned to a bank, in repossessing the truck after the sale, bank was liable for conversion and damages. Makransky v. Long Island Reo Truck Co., 58 Misc. 2d 338 (1968).

The purchaser of a new automobile from a dealer in the ordinary course of business takes free of a security interest even though perfected, and even though the buyer knows of the terms of the security agreement. Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961).

21. Knowledge of violation.

A buyer takes free of a security interest in goods created by a seller who is in the business of selling goods of that kind, even if the interest is perfected, if the buyer merely knows that there is a security interest which covers the goods, but takes subject to the interest if he knows, in addition, that the sale is in violation of some term in the security agreement not waived by the words or conduct of the secured party (Uniform Commercial Code, § 1-201, subd [9]; § 9-307, subd [1]), although it is not incumbent upon the buyer to make a search for any possible security interests; and, a buyer who takes free of a perfected security interest takes free of an unperfected one as well. European-American Bank & Trust Co. v. Sheriff of the County of Nassau, 97 Misc. 2d 549 (1978).

Under UCC § 9-307(1), the secured party's knowledge or lack of knowledge, whether actual or constructive, is immaterial to the rights of a buyer in the ordinary course of business. In other words, the status of a buyer in the ordinary course of business does not depend on what the secured party knew. Antigo Co-op Credit Union v. Miller, 86 Wis. 2d 90, 271 N.W.2d 642 (1978).

Purchaser of cattle, which were subject to perfected security interest, was liable to secured party for value of cattle where, inter alia, secured party's financing statement was duly filed and perfected prior to sale, secured party did not authorize sale of cattle as required by security agreement, purchaser admitted he made no effort to look for filed financing statements, even though he knew his seller's cattle were mortgaged, and where purchaser transferred security to others and refused secured party's demand for payment. First Nat'l Bank v. Conness, 33 Ill. App. 3d 765, 338 N.E.2d 459 (3d Dist. 1975).

Buyer of tractors was not entitled to protection from manufacturer's security interest in equipment under UCC § 9-307, where buyer, who was experienced tractor dealer with knowledge of manufacturer's practice of "floor-planning" its equipment and who purchased equipment for considerably less than its value, made no investigation of prior security interest, acquiesced in falsification of retail order form, and misrepresented particulars of transaction, did not qualify as good faith buyer in ordinary course of business under UCC §§ 1-201(9) and 1-201(19). International Harvester Co. v. Glendenning, 505 S.W.2d 320, 87 A.L.R.3d 1 (Tex. Civ. App. 1974).

Auto dealer executed security agreements on 13 autos; plaintiff, contemplating sale of collateral in ordinary course of business, agreed to floor plan financing; dealer subsequently transferred autos to defendant for two practically worthless checks; defendant was not without knowledge that transfer was in violation of plaintiff's security interest; held, defendant was not "buyer in ordinary course of business." Stephenson Fin. Co. of Augusta, Inc. v. Bruce, 254 S.C. 249, 174 S.E.2d 750 (1970).

22. When status arises.

Under UCC § 9-307(1), the secured party's knowledge or lack of knowledge, whether actual or constructive, is immaterial to the rights of a buyer in the ordinary course of business. In other words, the status of a buyer in the ordinary course of business does not depend on what the secured party knew. Antigo Co-op Credit Union v. Miller, 86 Wis. 2d 90, 271 N.W.2d 642 (1978).

Even if property was previously encumbered, whether lessee-claimant occupied status of one who took auto in ordinary course of business was for jury determination precluding summary judgment for bank with security interest in same auto. First Nat'l Bank & Trust Co. v. McElmurray, 120 Ga. App. 134, 169 S.E.2d 720 (1969).

Whether a buyer buys in the ordinary course of business is determined by the circumstances as of the date of the purchase and the buyer's subsequent conduct does not affect his status if in fact he acted in good faith and without knowledge of an outstanding interest. C. Jon Dev. Corp. v. Pand-Rorsche Corp., 69 Ill. App. 2d 469, 217 N.E.2d 416 (1st Dist. 1966).

23. Effect of title defects.

It is immaterial to the operation of UCC § 9-307 that the title certificate given to the buyer was signed, unknown to the buyer, with a fictitious name. C. Jon Dev. Corp. v. Pand-Rorsche Corp., 69 Ill. App. 2d 469, 217 N.E.2d 416 (1st Dist. 1966).

24. Effect of federal law.

The Federal Aviation Act (see 49 USCS § 1403 et seq.), which provides a system for recordation of conveyances affecting title to or security interests in civil aircraft of the United States, does not preempt the rule prescribed by UCC § 9-307(1) that a buyer in ordinary course of business takes chattels free of a security interest created by his seller. Haynes v. GECC, 582 F.2d 869 (4th Cir. Va. 1978).

Ownership interest of buyer who bought airplane from recognized dealer in aircraft was superior to lien of defendant credit company which had loaned dealer money to purchase airplane, taken note for amount of such loan, executed security agreement whereby dealer pledged airplane and proceeds from its sale as security for payment of note, and recorded security agreement with aircraft registry office of Federal Aviation Administration pursuant to federal law (49 USCS § 1403), since (1) federal aircraft registration law, although providing that no interest in airplane could be valid in absence of federal recordation, was silent on issue of priorities among lien claimants and did not create affirmative priority of federally recorded interests as against rights declared by state law within meaning of UCC § 9-104(a); (2) defendant's security agreement, although recorded with federal aircraft registry office, also looked to Uniform Commercial Code as means by which defendant could enforce its rights; (3) buyer was purchaser in ordinary course of business from one engaged in selling goods of that kind, and sale was expressly permitted by defendant's security agreement; and (4) under UCC § 9-307(1), buyer in ordinary course of business clearly prevails over holder of security interest created by seller, even though such security interest is perfected. Haynes v. GECC, 432 F. Supp. 763 (W.D. Va. 1977), aff'd, 582 F.2d 869 (4th Cir. Va. 1978).

Federal Aviation Act (49 USCS § 1401 et seq.) preempts UCC § 9-307(1), dealing with rights of buyers in ordinary course of business, and renders properly registered security interest in airplane enforceable against buyer in ordinary course of business who subsequently purchases such plane. O'Neill v. Barnett Bank, 360 So. 2d 150 (Fla. App. 1978).

Individual who purchased airplane from dealer was buyer in ordinary course of business and thus took airplane free of bank's prior security interest under UCC § 9-307, notwithstanding bank had duly filed aircraft chattel mortgage with Federal Aviation Aircraft Registry pursuant to Federal Aviation Act. Idabel Nat'l Bank v. Tucker, 544 P.2d 1287 (Okla. Ct. App. 1975).

Under UCC §§ 9-307(1) and 9-104(a), a security interest in an airplane held as part of a dealer inventory, which interest was duly recorded with the F.A.A. as required by federal law (see 49 USCS § 1403), is not superior to the rights of a purchaser for value from the dealer without actual notice of a security interest. In such case, although congress, by providing a federal system for registration of conveyances and liens affecting title to aircraft, did preempt that field and render state recording statutes inapplicable to such title instruments, the federal statute did not remove from resolution under state law questions concerning the validity of such title documents, actual notice, good-faith-purchaser status, and similar matters. Bank of Hendersonville v. Red Baron Flying Club, Inc., 571 S.W.2d 152 (Tenn. Ct. App. 1977), cert. denied, 439 U.S. 1089, 99 S. Ct. 872, 59 L. Ed. 2d 56 (1972).

Holder of prior recorded security interest in new airplane prevailed over subsequent buyer in ordinary course of business, from duly authorized dealer, where buyer neither recorded his own title nor searched Federal Aviation Agency records to discover security holder's prior claim. Dowell v. Beech Acceptance Corp., 3 Cal. 3d 544, 476 P.2d 401 (1970), cert. denied, 404 U.S. 823, 92 S. Ct. 45, 30 L. Ed. 2d 50 (1971).

25. Security interests as to which buyer takes free.

Under UCC § 9-307(1) and § 1-201(9), buyer of collateral in ordinary course of business took free of security interest therein where secured party did not know that debtor was in business of selling goods of that kind, even though security interest was perfected by proper execution and filing of financing statement. Antigo Co-op Credit Union v. Miller, 86 Wis. 2d 90, 271 N.W.2d 642, 25 U.C.C. Rep. Serv. 326 (1978); Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4, 24 U.C.C. Rep. Serv. 1366 (Tex. Civ. App. 1978), writ ref n r e, reh'g of writ of error overruled (Dec 6, 1978).

The Federal Aviation Act (see 49 USCS § 1403 et seq.), which provides a system for recordation of conveyances affecting title to or security interests in civil aircraft of the United States, does not preempt the rule prescribed by UCC § 9-307(1) that a buyer in ordinary course of business takes chattels free of a security interest created by his seller. Haynes v. GECC, 582 F.2d 869 (4th Cir. Va. 1978).

UCC § 9-307(2) gives protection to the buyer of consumer goods against a perfected security interest under specified circumstances. The statute is limited in its application to transactions between a consumer seller and a consumer buyer, and the goods must be consumer goods in the hands of both buyer and seller. However, a buyer does not take free of a security interest under UCC § 9-307(2) where, prior to the purchase, a financing statement has been filed with respect to the security interest. Memphis Bank & Trust Co. v. Pate, 362 So. 2d 1245 (Miss. 1978).

A buyer takes free of a security interest in goods created by a seller who is in the business of selling goods of that kind, even if the interest is perfected, if the buyer merely knows that there is a security interest which covers the goods, but takes subject to the interest if he knows, in addition, that the sale is in violation of some term in the security agreement not waived by the words or conduct of the secured party (Uniform Commercial Code, § 1-201, subd [9]; § 9-307, subd [1]), although it is not incumbent upon the buyer to make a search for any possible security interests; and, a buyer who takes free of a perfected security interest takes free of an unperfected one as well. European-American Bank & Trust Co. v. Sheriff of the County of Nassau, 97 Misc. 2d 549 (1978).

Where savings and loan association, entered into floor-plan agreement with mobile-home dealer under which association would pay manufacturer for each home delivered to dealer, retain invoice and certificate of origin of each delivered unit, and dealer would execute demand note and security interest in delivered unit to association which it would hold until it received payment from dealer; where buyers of mobile home from dealer subsequently executed instalment contract reciting payment of specified down payment, delivery and acceptance of home, and granting by buyers of security interest therein; and where dealer assigned such contract to corporation that assigned it to defendant bank, and money paid for contract by defendant bank was transmitted to dealer who breached his obligation to savings and loan association and absconded, in action by subrogee of rights of savings and loan association against defendant bank to determine priority of security interests in such home, (1) buyers of home were good-faith purchasers in ordinary course of business under UCC § 1-201(9) who took home under UCC § 9-307(1) free of subrogee's security interest therein; (2) defendant bank's security interest in home therefore had priority over subrogee's security interest; and (3) subrogee's security interest attached to proceeds of sale in hands of absconding dealer. Integrity Ins. Co. v. Marine Midland Bank-Western, 90 Misc. 2d 868 (1977).

Where Georgia Motor Vehicle Certificate of Title Act expressly provided that it did not apply to or effect security interest in vehicle that was created by manufacturer or dealer who held vehicle for sale, and that buyer in ordinary course of trade from manufacturer or dealer would take vehicle free of such security interest, perfection of security interest in dealer's floor-planned vehicle would come under Georgia Uniform Commercial Code and priority as to such security interest would be governed by Georgia UCC § 9-307(1), which provides that buyer in ordinary course of business takes free of security interest created by his seller, even though such security interest is perfected and buyer knows of its existence. Rome Bank & Trust Co. v. Bradshaw, 143 Ga. App. 152, 237 S.E.2d 612 (1977).

Individual who purchased airplane from dealer was buyer in ordinary course of business and thus took airplane free of bank's prior security interest under UCC § 9-307, notwithstanding bank had duly filed aircraft chattel mortgage with Federal Aviation Aircraft Registry pursuant to Federal Aviation Act. Idabel Nat'l Bank v. Tucker, 544 P.2d 1287 (Okla. Ct. App. 1975).

Evidence supported finding that automobile leasing company was in business of selling used automobiles and that defendant, who had purchased 10 automobiles from leasing company over period of years, was buyer in ordinary course of business who was entitled to take automobile free of security interest created by leasing company. American Nat'l Bank & Trust Co. v. Mar-K-Z Motors & Leasing Co., 11 Ill. App. 3d 1046, 298 N.E.2d 209 (1st Dist. 1973), aff'd, 57 Ill. 2d 29, 309 N.E.2d 567 (1974).

Auto purchase made from auto dealer's inventory in ordinary course of business without notice of trust security agreement between dealer and bank; held, buyer acquired title free of bank's trust security lien. Correria v. Orlando Bank & Trust Co., 235 So. 2d 20 (Fla. App. 1970).

Auto displayed on dealer's floor for resale; president of corporate dealer made no effort to claim personal ownership thereof; held, sale was in ordinary course of business and buyer took free of security interests created by president on such auto. GMAC v. Keil, 176 N.W.2d 837 (Iowa 1970).

The purchaser of a new automobile from a dealer in the ordinary course of business takes free of a security interest even though perfected, and even though the buyer knows of the terms of the security agreement. Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961).

The buyer of an automobile in the ordinary course of business from an automobile dealer takes the car free of any perfected security interest. Murphy v. Plymouth Nat'l Bank, 22 Mass. App. Dec. 36 (1961).

26. Security interests as to which buyer takes subject.

Under UCC §§ 9-306(2) and 9-307(1), secured party's perfected security interest in cotton crop followed debtor's sale of crop to cotton buyer, and buyer was liable to secured party for any sums paid debtor for such cotton that debtor had not remitted to secured party. Oxford Prod. Credit Ass'n v. Dye, 368 So. 2d 241 (Miss. 1979).

UCC § 9-307(2) gives protection to the buyer of consumer goods against a perfected security interest under specified circumstances. The statute is limited in its application to transactions between a consumer seller and a consumer buyer, and the goods must be consumer goods in the hands of both buyer and seller. However, a buyer does not take free of a security interest under UCC § 9-307(2) where, prior to the purchase, a financing statement has been filed with respect to the security interest. Memphis Bank & Trust Co. v. Pate, 362 So. 2d 1245 (Miss. 1978).

Where (1) first creditor filed financing statement covering present and future inventory of motor-home retailer, (2) retailer thereafter acquired motor home from manufacturer and placed it in retailer's inventory for resale, (3) second creditor made loan to retailer and filed financing statement on such motor home without determining whether any prior financing statements were on file, (4) second creditor thereafter filed application for title certificate for home, which was issued five months later and indicated that retailer was home's owner and that second creditor was first lienholder, and (5) on retailer's default on loan, second creditor filed declaratory-decree action seeking to have its lien determined to be superior to that of first creditor, court held (1) that when first creditor filed financing statement on retailer's inventory, no title certificate or manufacturer's certificate of origin was in existence and thus first creditor could only protect its lien right by filing financing statement under Florida Uniform Commercial Code, (2) that both Florida Uniform Commercial Code, in § 9-302(3)(b), and Florida Motor Vehicle Title Certificates Act provide that lien recording provisions of Uniform Commercial Code, rather than those of Motor Vehicle Title Certificates Act, govern liens on motor vehicles held as inventory, (3) that at time of second creditor's loan to retailer, second creditor knew that no title certificate had been issued, (4) that first creditor was entitled to rely on its financing statement as notice to second creditor of first creditor's prior lien, (5) that second creditor was not buyer in ordinary course of business under UCC § 9-307(1), and (6) that since second creditor was not buyer in ordinary course of business, first creditor's security interest in motor home was superior to that of second creditor. Borg-Warner Acceptance Corp. v. Atlantic Bank, 364 So. 2d 35 (Fla. App. 1978).

A buyer takes free of a security interest in goods created by a seller who is in the business of selling goods of that kind, even if the interest is perfected, if the buyer merely knows that there is a security interest which covers the goods, but takes subject to the interest if he knows, in addition, that the sale is in violation of some term in the security agreement not waived by the words or conduct of the secured party (Uniform Commercial Code, § 1-201, subd [9]; § 9-307, subd [1]), although it is not incumbent upon the buyer to make a search for any possible security interests; and, a buyer who takes free of a perfected security interest takes free of an unperfected one as well. European-American Bank & Trust Co. v. Sheriff of the County of Nassau, 97 Misc. 2d 549 (1978).

Plaintiff, who purchased a used automobile from a car dealer which was subject to an outstanding security instrument lien created by an earlier owner, is not entitled to protection from the prior perfected security interest afforded to consumers under subdivision (1) of section 9-307 of the Uniform Commercial Code which provides that a "buyer in ordinary course of business...takes free of a security interest created by his seller", since the security interest in question was not created by plaintiff's seller, but was instead created by an earlier owner. Plaintiff is not entitled to any additional protection from the existing security interest since a finance statement covering the automobile had been filed. (Uniform Commercial Code, § 9-307, subd [2].) Accordingly, plaintiff's purchase from the car dealer is subject to the perfected security interest. Lindsley v. Financial Collection Agencies, Inc., 97 Misc. 2d 263 (1978).

Where (1) plaintiff purchased used car from dealer, (2) such car, prior to plaintiff's purchase, was subject of security agreement that defendant secured party had perfected by filing of financing statement, and (3) original purchaser of car sold it to third person, who in turn resold it to dealer from whom plaintiff purchased it, court held (1) that although plaintiff was buyer in ordinary course of business under UCC § 9-307(1), he was not protected in his purchase because security interest in car had been created by original purchaser of car, instead of plaintiff's seller, and (2) that plaintiff was also not protected under UCC § 9-307(2), since secured party had filed financing statement covering car before plaintiff purchased it. Lindsley v. Financial Collection Agencies, Inc., 97 Misc. 2d 263 (1978).

Where (1) new mobile home was purchased by original buyer and seller assigned its security interest to plaintiff bank which perfected such interest by obtaining certificate of title which showed original buyer's ownership of home and plaintiff's security interest therein, (2) where original buyer later defaulted in making payments to plaintiff bank, seller reacquired home under circumstances not disclosed by the evidence and sold it as used vehicle to second buyer under purchase agreement reserving security interest that seller assigned to second bank not involved in suit, and (3) where second buyer signed application for title certificate to vehicle and was told by seller that second bank would retain certificate until purchase-money lien on vehicle was satisfied, second buyer could not successfully rely on UCC § 9-307(1) to defeat validity perfected security interest of plaintiff (the first bank), on ground that such section applied to case because seller as party to original contract of sale with original buyer had created security interest that was basis of plaintiff's claim, since plaintiff's security interest was created not by seller but by original buyer of vehicle from seller. First Am. Bank v. Hunning, 218 Va. 530, 238 S.E.2d 799 (1977).

Where the conditional purchaser of an automobile sold the car to a dealer without consent of the assignee of the conditional vendor, and the defendant innocently bought the vehicle from the dealer; the purchaser did not take free of the security interest held by the assignee of the conditional vendor, since UCC § 9-307(1) would permit him to take free only of a security interest created by his seller. National Shawmut Bank v. Jones, 108 N.H. 386, 236 A.2d 484 (1967).

Where a manufacturer of garden supplies distributed its products only through authorized dealers and its financing subsidiary took trust receipts on the goods sold expressly prohibiting dealers to resell except to authorized consumers, and the security interest had been established according to law, goods purchased from a dealer by a discount house with knowledge of provisions of the trust receipt took the same subject to the manufacturer's security interest. O.M. Scott Credit Corp. v. Apex Inc., 97 R.I. 442, 198 A.2d 673 (1964).

27. Conversion action or the like.

Auctioneer who as agent of debtor sold collateral subject to perfected security interest held by agency of United States (FHA) and remitted proceeds to debtor was guilty of conversion, even though auctioneer had no actual knowledge of security agreement, where debtor had right to sell collateral but not right to retain proceeds. In such case, because converter of secured property is strictly liable for such tort, auctioneer's liability was primary and not derivatively acquired from debtor. United States v. Gallatin Livestock Auction, Inc., 448 F. Supp. 616 (W.D. Mo. 1978), aff'd, 589 F.2d 353 (8th Cir. Mo. 1978).

Purchaser of automobile covered by security interest was liable to secured party for conversion where automobile dealer, who was indebted to purchaser for $10,000, gave purchaser check for $5,000 in partial satisfaction of such debt, and purchaser indorsed check back to dealer in payment for automobile: (1) when dealer executed and delivered check to purchaser, it did not alter fact that dealer was still indebted to purchaser for $10,000 and when purchaser indorsed check back to dealer in payment for automobile, transaction constituted transfer of automobile for or in partial satisfaction of money debt and purchaser was not, therefore, "buyer in ordinary course of business" within meaning of UCC § 1-201(9), whether or not he acted in good faith and whether or not at time he received check he intended to exchange it for automobile; (2) since purchaser was not "buyer in ordinary course of business" he did not take automobile free from security interest under UCC § 9-307(1), but took it subject thereto under UCC § 9-306(2), and he converted secured party's security interest when he took possession of car through unauthorized sale by dealer, removed it from dealer's place of business in violation of terms of security agreement, and began driving it as his family car. Chrysler Credit Corp. v. Malone, 502 S.W.2d 910 (Tex. Civ. App. 1973).

Where A sold two television sets to B, who was not in business of selling televisions, and B quickly resold them to C, a pawnshop, A's security interest, although unrecorded, was effective against pawnbroker in conversion suit against C who resold sets, even though C was acting in good faith and even though A had made no demand for sets when they were in C's possession. White-Sellie's Jewelry Co. v. Goodyear Tire & Rubber Co., 477 S.W.2d 658 (Tex. Civ. App. 1972).

Where plaintiff bought truck from a merchant in the ordinary course of business, without knowledge of a security agreement entered into by the seller and later assigned to a bank, in repossessing the truck after the sale, bank was liable for conversion and damages. Makransky v. Long Island Reo Truck Co., 58 Misc. 2d 338 (1968).

Although a bank's security agreement expressly provided that the debtor would not sell or otherwise dispose of the cattle which were its security without its written consent, the fact that the bank had permitted, acquiesced in, and consented to the debtor's making a series of sales of cattle at auction through the defendant's commission house and market agency without requiring that its prior written consent be obtained constituted a waiver of the bank's possessory rights in the security, and the court held that the defendant had not wrongfully converted the cattle in which the bank had an enforceable security interest, and that he was not responsible for the debtor's failure to remit the proceeds of the sales to the bank. Clovis Nat'l Bank v. Thomas, 77 N.M. 554, 425 P.2d 726 (1967).

D. Buyers of Consumer Goods.

28. In general; transactions contemplated.

Code § 9-307(2) applies only in case of purchase of goods by one consumer from another consumer, being inapplicable to purchase of goods by consumer from nonconsumer. Everett Nat'l Bank v.

Deschuiteneer, 109 N.H. 112, 244 A.2d 196 (1968).

A judgment creditor who purchases consumer goods, including in Massachusetts an automobile, at an execution sale to satisfy his judgment, even though he did not know of a perfected security interest in the goods and he purchased for value for his own personal use, is not within the protection of subsection (2) of the instant section because such a purchase does not come within the code definition of purchase [§ 1-201(32)] as a voluntary transaction, because there is nothing in the code indicating any intent to change prior Massachusetts law under which the execution purchaser would not have been protected, and because to allow a security interest to be wiped out by such a transaction would make of little avail the perfecting of security interests in consumer goods without the necessity for filing. National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

The holder of a purchase money security interest in a household laundry dryer, which was within the definition of "consumer goods," could maintain an action against a used household appliance dealer who purchased property from the defaulting debtor for the purpose of resale, although no financing statement had been filed. United Gas Imp. Co. v. McFalls, 18 Pa. D. & C.2d 713 (1959).

29. Motor vehicles distinguished.

Where dealer assigned title to used car to salesman who used title as collateral to obtain bank loan; where bank perfected security interest in car by timely filing, but such lien, not being required by state law to be recorded on certificate of title in order to be perfected, was not so recorded; and where car was thereafter sold for cash to buyer who took possession of vehicle, in bank's replevin action to obtain possession of car, (1) buyer's claim that bank's perfected security interest was cut off by UCC § 2-403(2) could not be sustained, since bank was not owner of car and thus could not be its "entruster" under UCC § 2-403(2); but (2) since nothing in comments to UCC Art 9 requires "created by his seller" limitation in UCC § 9-307(1) to be insurmountable barrier to good faith acquisition of preencumbered property from dealer who was instrumental in creating encumbrance on, and conflict of rights to, such property, buyer's right to possession of car was protected by "created by his seller" provision in UCC § 9-307(1), on theory that same entity (dealer) both created security interest in car and later sold car to "buyer in ordinary course of business," and bank's security interest in car therefore terminated on its sale to buyer. Adams v. City Nat'l Bank & Trust Co., 565 P.2d 26 (Okla. 1977).

Where mobile home dealer sold mobile home to first purchaser, sale was financed by retail instalment contract held by secured party, certificate of title was issued by Department of Motor Vehicles to first purchaser showing secured party as lienholder, first purchaser defaulted and returned possession of mobile home to dealer, and dealer then sold mobile home to second purchaser, without knowledge or consent of secured party, second purchaser did not take mobile home free from secured party's security interest; second purchaser was not protected by UCC § 9-307(1), since security interest in mobile home was not created by seller but by first purchaser; nor was second purchaser protected by UCC § 9-307(2), since secured party's interest was protected, not by filing a financing statement, but by issuance of certificate of title listing secured party as lienholder. Black v. Schenectady Disct. Corp., 31 Conn. Supp. 521, 324 A.2d 921 (1974).

Rule that dealer having authority to expose floor plan cars for sale in ordinary course of business binds his mortgagee to deliver title to any car so sold, when payment is made to dealer and whether or not dealer remits proceeds to his mortgagee, unless buyer knows or should have known of financing arrangements, or unless contract of sale can and does expressly limit warranty of title given, was not affected or undermined by subsequent adoption of article 9 of UCC; although in adopting Code, Ohio general assembly modified language of UCC to provide that § 9-307 does not apply in motor vehicle title cases, and though UCC § 9-205 repudiates, as against creditors, common law rule which held floating liens void as matter of law, protection afforded purchaser in ordinary course of business was expanded to provide absolute protection in cases other than purchases of motor vehicles; however, it cannot from this be concluded that buyer of vehicle is left unprotected, only that Commercial Code, as adopted, fails to speak to issue and recourse must be had to common law and other statutory law. Levin v. Nielsen, 37 Ohio App. 2d 29, 306 N.E.2d 173 (1973).

Finding that ultimate buyers of automobiles were good faith consumers purchasers for value from consumer seller without knowledge of automobile dealers' security interest which had not been filed was correct, where evidence indicated that buyers knew person who made approaches which culminated in sales in question, had learned from inquiries that asking price of cars was consistent with prices at which such cars could be bought, and had purchased car previously from contact man without any untoward incidents, and where there was no evidence that buyers had actual knowledge of status of title to cars in question. Balon v. Cadillac Auto. Co., 113 N.H. 108, 303 A.2d 194 (1973).

Where plaintiff bought truck from a merchant in the ordinary course of business, without knowledge of a security agreement entered into by the seller and later assigned to a bank, in repossessing the truck after the sale, bank was liable for conversion and damages. Makransky v. Long Island Reo Truck Co., 58 Misc. 2d 338 (1968).

The fact that title has not yet been transferred as between the dealer and the consumer does not prevent the latter from being regarded as a buyer in the ordinary course of business, insofar as the secured creditor of the dealer is concerned, where the transaction between the dealer and the consumer is ordinary or typical in the trade. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

Where the buyer of an automobile cannot make the cash down payment but trades in her automobile and makes a specific promise as to when she will pay the cash she is to be deemed in ordinary course. Chrysler Credit Corp. v. Sharp, 56 Misc. 2d 261 (1968).

Where a buyer, in the ordinary course of business, bought and accepted an automobile from a dealer in the business of selling cars from inventory at a time when no security interest had been placed on the automobile, a trust receipt security interest executed 11 days later by the dealer with a finance company passed no security interest in the car sold to the buyer, even if the automobile was a used one and even though the buyer had received only a temporary registration transfer certificate and bill of sale at the time of purchase and a certificate of title to the automobile was subsequently issued to the finance company. Main Inv. Co. v. Gisolfi, 203 Pa. Super. 244, 199 A.2d 535 (1964).

The purchaser of a new automobile from a dealer in the ordinary course of business takes free of a security interest even though perfected, and even though the buyer knows of the terms of the security agreement. Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961).

An acceptance company which had made loans to a dealer was required to look to the dealer for repayment, rather than to a new automobile in possession of one who had purchased it from the dealer in the ordinary course of business, paying the full purchase price therefor, notwithstanding that the acceptance company had filed a blanket security agreement executed by the automobile dealer, who had also executed and delivered to the acceptance company a trust receipt agreement describing the automobile in question. Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961).

Where notwithstanding that buyer who bought an automobile from the dealer out of inventory and in ordinary course of business had paid the full purchase price, the dealer thereafter fraudulently executed a collateral mortgage with the identical automobile as security in favor of a bank with whom dealer had an existing floor plan agreement, the transaction between the dealer and the bank was void as to the buyer. Weisel v. McBride, 191 Pa. Super. 411, 156 A.2d 613 (1959).

30. Knowledge.

Where Georgia Motor Vehicle Certificate of Title Act expressly provided that it did not apply to or effect security interest in vehicle that was created by manufacturer or dealer who held vehicle for sale, and that buyer in ordinary course of trade from manufacturer or dealer would take vehicle free of such security interest, perfection of security interest in dealer's floor-planned vehicle would come under Georgia Uniform Commercial Code and priority as to such security interest would be governed by Georgia UCC § 9-307(1), which provides that buyer in ordinary course of business takes free of security interest created by his seller, even though such security interest is perfected and buyer knows of its existence. Rome Bank & Trust Co. v. Bradshaw, 143 Ga. App. 152, 237 S.E.2d 612 (1977).

31. Personal, family, or household purpose.

In National Shawmut Bank v. Vera (1967) 352 Mass 11, 223 NE2d 515, 4 UCCRS 1, it was assumed that under subsec. 2 of the instant section, one who innocently buys for his own personal purposes consumer goods from another consumer takes the goods free of a security interest in the goods which has been perfected without filing. National Shawmut Bank v. Vera, 352 Mass. 11, 223 N.E.2d 515 (1967).

32. Farm products (prior to 1977 amendment).

Under UCC § 9-307(1), one who buys farm products from person engaged in farming operation takes products subject to any security interest therein. Southwest Wash. Prod. Credit Ass'n v. Seattle-First Nat'l Bank, 19 Wash. App. 397, 577 P.2d 589 (1978), overruled on other grounds, 92 Wash. 2d 30, 593 P.2d 167 (1979).

One who bought beans from a seller engaged in farming operations could not be classified as a buyer in the ordinary course of business under UCC § 9-307(1). United States v. Hughes, 340 F. Supp. 539 (N.D. Miss. 1972).

E. Buyers not in Ordinary Course; Future Advances.

33. In general.

Judgment creditor who bid in at farm auction sale conducted with consent of secured party, debtors, and judgment creditor was not buyer in "ordinary course of business." South Omaha Prod. Credit Ass'n v. Tyson's, Inc., 189 Neb. 702, 204 N.W.2d 806 (1973).

One who receives only security interest for money debt cannot qualify as "buyer in ordinary course of business" within UCC § 9-307(1). International Harvester Credit Corp. v. Commercial Credit Equip. Corp., 125 Ga. App. 477, 188 S.E.2d 110 (1972).

One who buys an auto from a seller who is not engaged in the selling of autos as a systematic economic enterprise cannot qualify as a "buyer in the ordinary course of business" within UCC § 9-307. Newton-Waltham Bank & Trust Co. v. Bergen Motors, Inc., 68 Misc. 2d 228 (1971), aff'd, 75 Misc. 2d 103, 347 N.Y.S.2d 568 (1972).

Party causing sheriff to levy upon mobile home to satisfy debt is not "buyer in ordinary course of business" within UCC § 9-307(1), but is lien creditor who must take secondary place to perfected security interest. Troy Lumber Co. v. Williams, 124 Ga. App. 636, 185 S.E.2d 580 (1971).

Auto wholesaler purchased autos in which bank held security interest from auto leasing and rental company; held, this was not purchase from person engaged in business of selling cars and wholesaler was not entitled to "buyer in ordinary course of business" status. Hempstead Bank v. Andy's Car Rental Sys., 35 A.D.2d 35 (2d Dep't 1970).

Sale of autos was not in "ordinary course of business" where sale took place at usual place of business of neither buyer nor seller, but on auction lot of third party in state where neither buyer nor seller was doing business. Rhode Island Hosp. Trust Co. v. Leo's Used Car Exch., Inc., 314 F. Supp. 254 (D. Mass. 1970).

Buyer who took supplies in satisfaction of antecedent indebtedness was not buyer in ordinary course within Code § 9-307(1). United States v. Greenwich Mill & Elevator Co., 17 Ohio Misc. 71, 291 F. Supp. 609 (N.D. Ohio 1968).

Attaching creditor does not qualify as buyer in ordinary course of business within Code § 9-307(1). Mechanicks Nat'l Bank v. Parker, 109 N.H. 87, 242 A.2d 69 (1968).

RESEARCH REFERENCES

ALR. Motor vehicle certificate of title or similar document, in hands of one other than legal owner, as indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests. 18 A.L.R.2d 813.

Who is "person in business of selling goods of that kind" within provision of UCC § 1-201(9) defining buyer in ordinary course of business for purposes of UCC § 9-307(1). 73 A.L.R.3d 338.

Construction of UCC § 9-307(3) providing that under certain conditions a buyer, other than a buyer in the ordinary course of business, takes free of a security interest securing "future advances". 35 A.L.R.4th 390.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 730 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:461 et seq. (priorities and protection of purchasers; buyer of goods).

CJS. 79 C.J.S., Secured Transactions § 93.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.

(a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

SOURCES: Derived from 1972 Code §§ 75-2A-103 [Laws, 1994, ch. 445, § 1, eff from and after July 1, 1994] and 75-2A-307 [Laws, 1994, ch. 445, § 1, eff from and after July 1, 1994] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

(a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security

interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of subsection (a)(1):

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 75-9-327, 75-9-328, 75-9-329, 75-9-330, or 75-9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a) through (e) are subject to:

(1) Subsection (g) and the other provisions of this part;

(2) Section 75-4-210 with respect to a security interest of a collecting bank;

(3) Section 75-5-118 with respect to a security interest of an issuer or nominated person; and

(4) Section 75-9-110 with respect to a security interest arising under Article 2 or 2A.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

SOURCES: Derived from former 1972 Code § 75-9-312 [Codes, 1942, § 41A:9-312; Laws, 1966, ch. 316, § 9-312; Laws, 1977, ch. 452, § 21; Laws, 1986, ch. 343, § 2; Laws, 1990, ch. 384, § 54; Laws, 1996, ch. 468, § 69, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Security interest of collecting bank in items, accompanying documents, and proceeds, see § 75-4-208.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former § 75-9-312.

A. In General.

6. Generally.
7. Effect of title.

B. General Rules of Priority.

8. In general; scope.
9. Effect of notice.
10. Perfected interest; order of filing.
11. —Order of perfection.
12. Unperfected interests.
13. —Order of attachment.
14. Continuity.
15. Proceeds.
16. Future advances.
17. After-acquired property.
18. Assignee or subrogee.

C. Special Rule as to Crops.

19. In general.

D. Inventory-Secured Purchase Money Security Interests.

20. In general.
21. Time of perfection.
22. Notice.
23. —Timeliness.
24. —Sufficiency.
25. After-acquired property.

E. Non-Inventory Secured Purchase Money Security Interests.

26. In general.
27. Notice.
28. Time of perfection.
29. Type of collateral.
30. —Equipment.
31. —Consumer goods.
32. After-acquired property.
33. Priority as to lien creditors.

F. Decisions Under Former Statutes.

34. In general.

I. Under Current Law.

1. In general.

Because under Miss. Code Ann. §§ 75-9-203, 75-9-322, the first perfected security interest had priority, plaintiff, a receiver for the receivership entities, on behalf of the entities' creditor who filed first, had priority over a state tax lien such that defendant state taxing authority's distress warrants issued against the entities' accounts receivable were quashed. Nabers v. Morgan, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 10504 (S.D. Miss. Feb. 2, 2011).

2.-5. [Reserved for future use.]

II. Under Former § 75-9-312.

A. In General.

6. Generally.

UCC § 9-312 sets forth criteria for determining priority of conflicting security interests. The sections enumerated in subsection (1) of UCC § 9-312 list specific statutes for specific problems in priority and take precedence over the general rules or priorities between conflicting security interests in subsections (2) through (6). Babson Credit Plan, Inc. v. Cordele Prod. Credit Ass'n, 146 Ga. App. 266, 246 S.E.2d 354 (1978).

With respect to the distinction between "attachment" and "perfection" of a security interest, "perfection" is significant only when the question involves priority between security interests. "Attachment," on the other hand, determines the existence of a security interest as between the seller and the purchaser. Babson Credit Plan, Inc. v. Cordele Prod. Credit Ass'n, 146 Ga. App. 266, 246 S.E.2d 354 (1978).

Lack of perfection of security interest under Article 9 of UCC relates only to priority over other creditors' interests in collateral, and security agreement as between parties themselves and secured party's rights over collateral as against debtor are unaffected by failure to perfect security interest; thus, assignee for security purposes of beneficial interest in land trust was entitled to redeem from tax sale of real estate which comprised corpus of trust notwithstanding his failure to perfect security interest by filing financing statement. Application of County Treasurer of Du Page County (App. 2 Dist.1973) 16 Ill. App. 3d 385, 306 N.E.2d 743

While the rights of a third person can rise no higher than those of the holder of the prior interest, the third person was not limited in the enforcement of its claim to the amount paid by the third person to the holder of the prior interest less amounts received by the third person from the debtor. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

Real estate mortgages are not to be viewed as security agreements merely because they happened to contain provisions relating to attached personalty. In re Royer's Bakery, Inc., 58 Lanc. L. Rev. 405 (Pa 1963).

7. Effect of title.

In determining priorities it is immaterial whether title to collateral is in the secured party or the debtor. Bloom v. Hilty, 427 Pa. 463, 234 A.2d 860 (1967).

B. General Rules of Priority.

8. In general; scope.

Failure of creditor with perfected purchase money security interest to renew original filing relegated creditor to standing of unperfected secured creditor; creditor did not reperfect its purchase money lien upon repossession of collateral, due to 20-day perfection requirement. United States v. Williams, 82 B.R. 430 (Bankr. N.D. Miss. 1988).

Enactment of priority provisions of Ohio UCC § 9-312 did not preclude imposition of equitable liens in all situations, in light of Ohio UCC § 1-103 dealing with supplementation of Ohio Uniform Commercial Code by existing principles of law and equity. General Ins. Co. of Am. v. Lowry, 10 Ohio Op. 3d 138, 570 F.2d 120 (6th Cir. Ohio 1978).

UCC § 9-312 sets forth criteria for determining priority of conflicting security interests. The sections enumerated in subsection (1) of UCC § 9-312 list specific statutes for specific problems in priority and take precedence over the general rules or priorities between conflicting security interests in subsections (2) through (6). Babson Credit Plan, Inc. v. Cordele Prod. Credit Ass'n, 146 Ga. App. 266, 246 S.E.2d 354 (1978).

Since television set and tape player were consumer goods, filing was not necessary to perfect purchase money security interest of conditional seller who thus had priority over security interest of pawnbroker who subsequently took possession of goods as security for loan. Kimbrell's Furn. Co. v. Friedman, 261 S.C. 172, 198 S.E.2d 803 (1973).

Holder of purchase money security interest had priority over conflicting security interest of another creditor who had acquired subsequently executed chattel mortgage on same collateral. International Harvester Credit Corp. v. Commercial Credit Equip. Corp., 125 Ga. App. 477, 188 S.E.2d 110 (1972).

In priority situation of UCC § 9-312(5), perfection of security interest by mortgagee is sufficient to defeat claims by trustee in bankruptcy under § 70(c) of the Bankruptcy Act. August v. Poznanski, 383 Mich. 151, 174 N.W.2d 807 (1970).

9. Effect of notice.

Although debtor's attorneys, by taking possession of debtor's stock pursuant to pledge agreement, perfected their security interest therein and, under UCC § 9-312, attorneys' rights in stock would prevail over secured party's prior unperfected security interest, secured party would be granted equitable lien against stock superior in priority to later perfected security interest held by attorneys where one attorney was not merely disinterested creditor who attempted to protect his commercial interests but was debtor's attorney and, together with his client, as witness and obligor respectively, signed agreement whereby secured party obtained security interest in stock. General Ins. Co. of Am. v. Lowry, 412 F. Supp. 12 (S.D. Ohio 1976), aff'd, 570 F.2d 120, 10 Ohio. Op. 3d 138 (6th Cir. Ohio 1978).

Security interest of creditor which was properly filed and perfected prior to time security interest of second creditor in same collateral (appliances) was either properly filed or perfected had priority under UCC § 9-312(5)(a), and such priority was not affected by first creditor's alleged knowledge of contents of second creditor's security agreement with debtor based on receipt of partial copy of such agreement, since under UCC § 9-401(2) knowledge of contents of a creditor's improperly filed financing statement-and not knowledge of such creditor's security agreement with his debtor-is what is necessary to render effective a good-faith but improperly filed financing statement. In re County Green Ltd. Partnership, 438 F. Supp. 693 (W.D. Va. 1977).

Since only statutory landlord's liens are excluded by UCC § 9-104(b) from operation of Article 9 of Uniform Commercial Code, prior contractual landlord's lien in personal property of debtor, which was expressly provided for in debtor's lease of certain realty but which landlord did not perfect as security interest by filing of proper financing statement under Article 9, was not superior to bank's subsequent security interest in same property which bank perfected by filing of proper financing statements. Moreover, bank in such case was not precluded from asserting under UCC § 9-312(5)(a) priority of its subsequently perfected security interest by fact that at time it extended credit to debtor and perfected security interest in debtor's property, it had actual knowledge of landlord's prior unrecorded contractual lien on such property, since it had notified landlord about loan it proposed to make to debtor and also had requested landlord to subrogate his interest to such loan, and landlord at that time could have perfected his contractual lien in debtor's property by filing proper financing statement covering such property. Bank of N. Am. v. Kruger, 551 S.W.2d 63 (Tex. Civ. App. 1977), writ ref'd n.r.e., (July 13, 1977).

When the holder of a security interest perfects the same, subsequent purchasers and encumbrancers are charged with notice of such perfected interest. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

The lien of a common carrier for the cost of transporting a house trailer from Virginia to Oklahoma was subordinate to a prior security interest perfected in Virginia of which the carrier was charged with notice. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

10. Perfected interest; order of filing. Since financing statement may be filed before security interest itself attaches, test for determining priority of competing security interests under Mississippi UCC § 9-312(5)(a) is not when such interests attached but order and time of their filing. In re Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977), rev'd on other grounds, 614 F.2d 399 (5th Cir. 1980).

In action to determine priorities of assignments made by owner of condemned land to proceeds of condemnation award, (1) under UCC § 9-301(1)(a) and § 9-312(5)(a), assignee which had first perfected its security interest by filing financing statement with secretary of state had first priority in such proceeds, (2) assignee which had perfected its security interest by filing after date on which holder of first priority had filed had second priority, (3) assignee which had never filed financing statement had third priority, and (4) all of such priorities were subordinate to lien of attorney for owner of the condemned land, even though attorney's notice of intent to enforce his attorney's lien was not filed in record of action until after both perfected creditors had filed their financing statements, since under circumstances of case, such creditors had duty to inquire about status of attorney's lien. Board of County Comm'rs v. Berkeley Village, 40 Colo. App. 431, 580 P.2d 1251 (1978).

Where (1) secured party's loan to debtor was secured by interest in debtor's accounts receivable, (2) after loan was made, debtor sold goods to third party, who was obligated to pay debtor specified sum therefore, (3) debtor owed money to still another third party and entered into arrangement with both third parties whereby money owing to debtor from first third party would be set off against money that debtor owed to second third party, and (4) secured party sought to pierce such arrangement and reach receivables owed to debtor by first third party, court held that in absence of proof that arrangement between debtor and such third parties predated secured transaction between plaintiff and debtor, plaintiff's perfected security interest prevailed under UCC § 9-312 over the presumably subsequent and unperfected security interest of second third party. Bank Leumi Trust Co. v. Collins Sales Serv., Inc., 65 A.D.2d 735 (1st Dep't 1978), aff'd, 47 N.Y.2d 888, 419 N.Y.S.2d 474, 393 N.E.2d 468 (1979).

In action between creditors for possession of debtors' (husband and wife) collateral, where (1) (a) plaintiff creditor's security agreement, which did not provide for future advances, covered debtors' household furnishings, (b) plaintiff properly filed financing statement on December 20, 1973, (c) debt was fully paid on November 8, 1974, and (d) plaintiff did not file termination statement, (2) defendant creditor's security agreement covered essentially the same property, and defendant properly filed financing statement on January 3, 1975, (3) (a) plaintiff creditor, on July 11, 1975, December 1, 1975, and July 2, 1976, made new loans to debtors, (b) debtors executed new security agreements covering same collateral first pledged in 1973, and (c) plaintiff relied on December 20, 1973 financing statement, (4) debtors filed petition in bankruptcy on September 23, 1976, and (5) defendant creditor, on September 30, 1976, seized property covered by both plaintiff's and defendant's perfected security interests, court held (1) that all loans made by plaintiff and defendant, except plaintiff's July 2, 1976 loan, were governed by pre-1972 UCC § 9-312(5)(a), which determined priority between conflicting security interests in same collateral by order of filing if both were perfected by filing, (2) under pre-1972 UCC § 9-312(5)(a), plaintiff's security interest in collateral for plaintiff's July 11, 1975 and December 1, 1975 loans, which was perfected at time such loans were made, had priority over defendant's security interest in the same collateral because plaintiff was the first to file, (3) such priority was not affected by fact that plaintiff's original loan, which was covered by plaintiff's filed financing statement of December 20, 1973, had been paid off, since under pre-1972 UCC § 9-403(2), a financing statement specifying no maturity date was effective for five years from date of its filing, and debtors had not requested that they be sent a termination statement, (4) under UCC § 9-312(7), which was added to Uniform Commercial Code in 1972, plaintiff's July 2, 1976 advance had same priority as plaintiff's December 1, 1975 advance, thus giving plaintiff's July 2, 1976 loan priority over defendant's loan, (5) since only one of the debtors-the wife-had properly signed plaintiff's December 20, 1973 financing statement, plaintiff's security interest had priority over defendant's security interest only to extent of wife's interest in collateral, and (6) conversely, defendant's security in property of husband, and also in property of wife that was not listed in plaintiff's December 20, 1973 financing statement, had priority over plaintiff's security interest under pre-1972 UCC § 9-301 (1)(a) and § 9-312 (5)(a). Provident Fin. Co. v. Beneficial Fin. Co., 36 N.C. App. 401, 245 S.E.2d 510 (1978), cert. denied, 295 N.C. 549, 248 S.E.2d 728 (1978).

In action for conversion of crops by defendant, where security interests of both plaintiff and defendant in same after-acquired crops of debtor attached under UCC § 9-204(1) and § 9-204(2)(a) at exactly the same time (when crops were planted), and where, because debtor owed installments to plaintiff within six months of planting his crops, defendant's security interest was not entitled to priority under UCC § 9-312(2) over plaintiff's security interest, plaintiff's security interest, which was perfected by filing of financial statement before defendant perfected his security interest by filing such a statement, was entitled under UCC § 9-312(5)(a) to priority over security interest of defendant. United States v. Minster Farmers Coop. Exch., Inc., 430 F. Supp. 566 (N.D. Ohio 1977).

Where bank acquired perfected security interest in payloader when original financing statement was filed in 1971, prior to time finance company obtained perfected security interest in same collateral in 1972, and where bank advanced an additional sum in 1974 including amount owing on original loan, bank's 1971 filing gave it priority over finance company under first to file rule of UCC § 9-312. Thorp Fin. Corp. v. Ken Hodgins & Sons, 73 Mich. App. 428, 251 N.W.2d 614 (1977).

In action between two secured parties with interest in same collateral, where second secured party filed financing statement before first secured party filed, even though second secured party's interest did not attach until later date, under UCC § 9-312(5), order of filing determined priority, giving second secured party right to foreclose on inventory and equipment of debtor. Enterprises Now, Inc. v. Citizens & S. Dev. Corp., 135 Ga. App. 602, 218 S.E.2d 309 (1975).

Where entruster filed financing statement, incorporating security agreement, one year before other claimant of bankrupt's equipment, entruster's interest had priority over other claimant with respect to office machines entrusted. First Nat'l Bank & Trust Co. v. Olivetti Corp. of Am., 130 Ga. App. 896, 204 S.E.2d 781 (1974).

Where the bankrupt purchaser of a bookbinding machine received possession of it on June 2, when the last of 15 crates containing component parts of the machine were delivered by common carrier to the bankrupt's Maryland plant, the seller's failure to file a financing statement until June 15 permitted the holder of a chattel mortgage containing an after-acquired property clause to obtain the right to possession of the machine. In re Automated Bookbinding Servs., Inc., 471 F.2d 546 (4th Cir. Md. 1972).

Where first secured party did not timely file financing statement until after filing of financing statement by second secured party, second secured party, as first to file, was entitled to priority, although first secured party's security interest was first in time. S. Lotman & Son v. Southeastern Fin. Corp., 288 Ala. 547, 263 So. 2d 499 (1972).

Actual knowledge on part of secured party of prior interest does not prevent secured party from achieving priority which would have otherwise been obtained by being the first to file. In re Smith, 326 F. Supp. 1311 (D. Minn. 1971).

When the purchase money security interest is not perfected by filing within the specified time there is no relation back of the perfection acquired by the subsequent filing. United States v. Thompson, 272 F. Supp. 774 (E.D. Ark. 1967), aff'd, 408 F.2d 1075 (8th Cir. Ark. 1969).

A house trailer is a motor vehicle within the meaning of the Uniform Commercial Code provision requiring filing with respect to motor vehicles which are to be licensed or registered in this state, and therefore mortgagee who perfected his security interest by filing the same was entitled to possession of a trailer as opposed to the owner of a retail instalment contract whose filing had expired prior to the mortgagee's perfecting of his security interest. Albany Disct. Corp. v. Mohawk Nat'l Bank, 54 Misc. 2d 238 (1967), modified on other grounds, 30 A.D.2d 623, 290 N.Y.S.2d 576 (3d Dep't 1968), on reargument, 30 A.D.2d 919, 292 N.Y.S.2d 300 (3d Dep't 1968), aff'd, 28 N.Y.2d 222, 321 N.Y.S.2d 94, 269 N.E.2d 809 (1971).

The Code follows a priority based on order of filing financing statements, when all interests are protected by such filing. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

As to transactions coming within subsection (5)(a) of the instant section, the order of filing determines the order of priorities among conflicting interests in the same collateral, but this result may be varied if one creditor succeeds to the priority of another. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

The order of priority among conflicting interests in the same collateral arising from filing under subsection (5)(a) of the instant section may be varied by the assignment by one creditor of his prior interest to another creditor under § 9-302(2), supra, which provides that a security interest can be "assigned" to another creditor without loss of its priority even if no filing is made. Thus, if the order of priority among three creditors is A, B and C, and A assigns its interest to C, C will acquire A's priority over B. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

11. —Order of perfection.

Where (1) first creditor, after making motel construction loan to debtor, obtained security agreement with after-acquired property clause that applied to all after-acquired furniture, furnishings, appliances, and equipment used to operate motel, (2) first creditor filed financing statement in chancery clerk's office in county where motel was located, but allegedly did not file such statement with secretary of state, and (3) second creditor (bank) had knowledge of first creditor's financing statement, court held (1) that record, although not conclusive, was persuasive that financing statement had been filed by first creditor with secretary of state, as required by UCC § 9-401(1)(c), and (2) since second creditor knew about first creditor's financing statement first creditor therefore, under express provisions of UCC § 9-401(2), had properly secured its interest in after-acquired personal property in debtor's motel. First Am. Nat'l Bank v. Alcorn, Inc., 361 So. 2d 481 (Miss. 1978).

Supplier of goods on open account, which held perfected security interest in debtor's inventory and accounts, was entitled under UCC § 9-312(1) to prevail in action against second supplier of goods to same debtor for value of goods removed by second supplier from debtor's inventory, where (1) second supplier's security interest in debtor's goods was not perfected, and (2) evidence did not sustain second supplier's contention that first supplier had, under UCC § 9-316, orally subordinated its perfected security interest to second supplier's unperfected security interest. A-W-D, Inc. v. Salkeld, 175 Ind. App. 443, 372 N.E.2d 486 (1978).

UCC § 9-312(4) provides the seller under a purchase-money contract with the right to retain his priority if he perfects his security interest before delivery or within ten days after delivery. Babson Credit Plan, Inc. v. Cordele Prod. Credit Ass'n, 146 Ga. App. 266, 246 S.E.2d 354 (1978).

Where instalment seller of cattle did not perfect security interest in livestock by retaining possession of cattle, and did not file financing statement until after bank had filed financing statement listing bank as creditor and instalment buyer as debtor and covering livestock belonging to buyer, bank's security interest in livestock had been perfected prior to security interest of seller. Walker Bank & Trust Co. v. Burrows, 29 Utah 2d 218, 507 P.2d 384 (1973).

Possession of mortgaged chattels by mortgagee perfects mortgagee's security interest and in such priority situation perfection of security interest by mortgagee is sufficient to defeat claims by trustee in bankruptcy under § 70(c) of Bankruptcy Act. August v. Poznanski, 383 Mich. 151, 174 N.W.2d 807 (1970).

Seller of drilling rig who received chattel mortgage encumbering rig and $7500 worth of gas drilling pipe and who filed financing statement was not lien creditor of secured party and under Code § 9-312(5)(b) prevailed over prior but unperfected security interest of seller of pipe, notwithstanding that title to pipe had remained in its seller and that rig seller may have had knowledge of pipe seller's prior security interest. Bloom v. Hilty, 427 Pa. 463, 234 A.2d 860 (1967).

12. Unperfected interests.

Where (1) secured party's loan to debtor was secured by interest in debtor's accounts receivable, (2) after loan was made, debtor sold goods to third party, who was obligated to pay debtor specified sum therefore, (3) debtor owed money to still another third party and entered into arrangement with both third parties whereby money owing to debtor from first third party would be set off against money that debtor owed to second third party, and (4) secured party sought to pierce such arrangement and reach receivables owed to debtor by first third party, court held that in absence of proof that arrangement between debtor and such third parties predated secured transaction between plaintiff and debtor, plaintiff's perfected security interest prevailed under UCC

§ 9-312 over the presumably subsequent and unperfected security interest of second third party. Bank Leumi Trust Co. v. Collins Sales Serv., Inc., 65 A.D.2d 735 (1st Dep't 1978), aff'd, 47 N.Y.2d 888, 419 N.Y.S.2d 474, 393 N.E.2d 468 (1979).

Historical society's unperfected security interest in station used by debtor railroad was not enforceable against creditor with perfected security interest arising out of recorded mortgage, nor against debtor's trustee in bankruptcy who had status of lien creditor. In re New Hope & I.R.R., 353 F. Supp. 608 (E.D. Pa. 1973).

Enforceable title retention agreement constitutes "purchase money security interest," and where unsigned by debtor, debtor was not entitled to special priority over conflicting security interest in same collateral, since debtor's interest was not perfected. Food Serv. Equip. Co. v. First Nat'l Bank, 121 Ga. App. 421, 174 S.E.2d 216 (1970).

13. —Order of attachment.

Where supplier sold truck body kits to debtor, but debtor failed to pay for kits, where bank loaned money to debtor and filed financing statement which listed body kits as collateral, but no separate written security agreement was entered into between bank and debtor, and where body kits were subsequently sold back to supplier and consigned to debtor under agreement giving supplier security interest in kits and supplier filed financing statement covering body kits: (1) bank did not perfect its security interest in collateral by taking "possession" pursuant to UCC § 9-305, prior to time supplier filed its financing statement with secretary of state, although bank's employees were present on debtor's premises during morning of day during which supplier filed, since bank did not begin loading collateral into its truck until sometime after supplier filed; and (2) fact that bank filed and then took possession of collateral did not give bank priority under "first to file" rule of UCC § 9-312(5)(a) since its interest had not attached under UCC § 9-204 prior to time bank took possession and bank could not combine elements of perfecting under filing method with elements under possession method to defeat rule of UCC § 9-305 that there can be no relation back of perfection date when perfection is obtained through possession. Transport Equip. Co. v. Guaranty State Bank, 518 F.2d 377 (10th Cir. Kan. 1975).

Where neither party has perfected his security interest, UCC § 9-312(5) determines priority between conflicting interests in same collateral; thus, where plaintiff-landlord had lien on tenant's property under terms of recorded lease which was valid under UCC § 9-204(3) but which was not perfected due to plaintiff's failure to file financing statement with secretary of state as required by UCC § 9-401(1)(c), and where defendant sold bar equipment to plaintiff's tenants under conditional sales contract and acquired purchase money security interest under UCC § 9-107(a), which was not perfected under UCC § 9-302(1) since defendant failed to obtain signatures of parties as required by UCC § 9-402(1), and where defendant subsequently repossessed and sold property in question, defendant's security interest took priority over plaintiff's either under theory that defendant perfected its security interest by repossessing and selling property or under theory that defendant's security interest attached prior to plaintiff's. Engelsma v. Superior Prods. Mfg. Co., 298 Minn. 77, 212 N.W.2d 884 (1973).

14. Continuity.

Although description of collateral contained in financing statement was standardized provision covering many irrelevant types of collateral, including "all inventory," phrase "all inventory" was sufficient to give other creditors notice that secured party had perfected security interest in not only inventory possessed by debtor at time of execution of security agreement but also inventory acquired thereafter until debt was paid. Thus, although subsequent creditor acquired purchase money security interest in debtor's inventory, subsequent creditor did not have priority of security interest in such inventory under UCC § 9-312 where prior secured party had prior perfected security interest in same inventory, and where subsequent creditor did not perfect its security interest in compliance with UCC § 9-401(1)(c) by filing financing statement in office of secretary of state. Borg-Warner

Acceptance Corp. v. Wolfe City Nat'l Bank, 544 S.W.2d 947 (Tex. Civ. App. 1976).

15. Proceeds.

Creditor which had perfected security interest in most of debtor's assets on April 3, 1972, by filing proper financing statements, and which subsequently perfected such security interest in all of debtor's assets on January 28, 1975, by taking possession thereof, had under UCC § 9-301(1) and UCC § 9-312 right to assets superior to right of second creditor which did not acquire interest in assets until April 11, 1975, when it levied execution on judgment against debtor and became lien creditor under UCC § 9-301(3). Thus, or debtor's default, first creditor could sell such assets under UCC § 9-504(1) and retain all proceeds of sale when proceeds did not fully satisfy debt owed to such creditor. GE Co. v. Hol-Gar Mfg. Corp., 431 F. Supp. 881 (E.D. Pa. 1977), aff'd, 573 F.2d 1301 (3d Cir. Pa. 1978).

16. Future advances.

Where first creditor in 1968 sold equipment to debtor, sale was financed by purchase money mortgage, and financing statement was filed, where in 1969 second creditor made advance to debtor, took same equipment as collateral and filed financing statement, and where in 1970 first creditor sold additional equipment to debtor, executed new purchase money mortgage and new note which included balance due on all indebtedness, and filed new financing statement, under UCC § 9-312(5)(a) security interest of first creditor with respect to equipment covered by 1968 security agreement took priority over second creditor's security interest notwithstanding first creditor's 1968 security agreement contained no provision to cover future advances as was specifically authorized by UCC § 9-204(5). Index Store Fixture Co. v. Farmers' Trust Co., 536 S.W.2d 902 (Mo. Ct. App. 1976).

In 1963 bank filed financing statement covering future advances; credit company had opportunity to request information from bank before making loan on same collateral; credit company inadvertently did not request such information and thereby permitted itself to be defrauded; held, bank had priority for various loans advanced between 1963 and 1965 though security agreement was executed with credit company in 1964 and financing statement of credit company was filed in 1964, while no security agreement with bank was executed until 1965. First Nat'l Bank & Trust Co. v. Atlas Credit Corp., 417 F.2d 1081 (10th Cir. Okla. 1969).

17. After-acquired property.

Where (1) first creditor, after making motel construction loan to debtor, obtained security agreement with after-acquired property clause that applied to all after-acquired furniture, furnishings, appliances, and equipment used to operate motel, (2) first creditor filed financing statement in chancery clerk's office in county where motel was located, but allegedly did not file such statement with secretary of state, and (3) second creditor (bank) had knowledge of first creditor's financing statement, court held (1) that record, although not conclusive, was persuasive that financing statement had been filed by first creditor with secretary of state, as required by UCC § 9-401(1)(c), and (2) since second creditor knew about first creditor's financing statement, first creditor therefore, under express provisions of UCC § 9-401(2), had properly secured its interest in after-acquired personal property in debtor's motel. First Am. Nat'l Bank v. Alcorn, Inc., 361 So. 2d 481 (Miss. 1978).

Where seller, as supplier of goods on credit, demanded return of goods from buyer within ten days upon discovery of buyer's insolvency pursuant to UCC § 2-702 and where bank had prior perfected security interest in all of buyer's inventory, then owned or thereafter acquired, bank, under definition of UCC § 10201(32,33) qualified as good faith purchaser making it exempt from seller's right to reclaim under UCC § 2-702(3) and bank's perfected security interest had priority over seller as seller failed to perfect its claim by filing as required by UCC § 9-312. House of Stainless, Inc. v. Marshall & Ilsley Bank, 75 Wis. 2d 264, 249 N.W.2d 561 (1977).

As to proceeds from sale of slaughtered meat, bankrupt packer's finance agency having prior perfected security interest in packer's assets, including after-acquired property, had priority over both unpaid cash sellers of cattle and packer's trustee in bankruptcy. Stowers v. Mahon, 526 F.2d 1238 (5th Cir. Tex. 1976), cert. denied, 429 U.S. 834, 97 S. Ct. 98, 50 L. Ed. 2d 99 (1976).

Buyer of business machines was not "debtor" of seller under UCC § 9-105(1) until execution and delivery of security interest agreement where buyer received machines to test usage prior to execution and delivery of agreements, and obtaining of outside financing by buyer was condition precedent to ultimate purchase; thus, financing statements filed within ten days after execution and delivery of purchase money security interest agreements complied with ten-day requirement of UCC § 9-312(4) and were entitled to priority over prior chattel mortgage security agreement containing after-acquired equipment security clause. In re Ultra Precision Indus., Inc., 503 F.2d 414 (9th Cir. Cal. 1974).

Possession under Code § 9-312(4) is not dependent upon completion of tender of delivery terms which affect only buyer and seller of goods; and, since possession of bookbinding machine was received on date when last crate of parts was shipped to buyer, seller's failure to file its financing statement within 10 days of this date, caused it to lose its favored position as purchase moneys secured party, entitling holder of security interest in buyer's after-acquired property to binder. In re Automated Bookbinding Servs., Inc., 471 F.2d 546 (4th Cir. Md. 1972).

Where second secured party had notice of interest held by first secured party in contractor's equipment, but chose to disregard information it had and make loans without checking proper filings, second secured party was not prejudiced by any shortcomings of financing statement filed by first secured party; and first secured party, whose security agreement adequately provided for equipment acquired by contractor after date of signing, had superior claim to proceeds held by receiver. Aetna Cas. & Sur. Co. v. J.F. Brunken & Son, 357 F. Supp. 290 (D.S.D. 1973).

The priority of a purchase money security interest over an interest acquired under an after-acquired property clause is established in Nebraska law by UCC § 9-312(4), as amended. United States v. Mid-States Sales Co., 336 F. Supp. 1099 (D. Neb. 1971).

An unrecorded "conditional sales contract note" covering furniture, furnishings and carpeting furnished to a non-profit corporation created only an unperfected security interest, and an encumbrance created by a prior deed of trust containing an after-acquired property provision was superior to the rights created by such note. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

The holder of a chattel mortgage covering after-acquired property who established his security interest by properly filing financing statements takes priority over holder of previously executed conditional sales contract covering the same personal property and fixtures. Cain v. Country Club Delicatessen of Saybrook, Inc., 25 Conn. Supp. 327, 203 A.2d 441 (1964).

18. Assignee or subrogee.

A vendor, by making an unconditional assignment of his note and deed of trust to a bank, and by filing that assignment in the Chancery Clerk's office conjunctive with an erroneous pay-off figure given by the bank to the closing attorney for a second bank which lent purchasers money secured by the real estate, required that the vendor's deed of trust be subordinated to the second bank's deed of trust. Cain v. Robinson, 523 So. 2d 29 (Miss. 1988).

In action to determine priority of security interests of bank and seller of hardware store, where evidence showed that seller's security interest in purchaser's collateral was perfected by filing on July 20, 1972, and that bank's interest in same collateral was perfected by filing on November 2, 1972; that bank, by subordination agreement entered into on July 12, 1972, had subordinated its claim against purchaser to claim of seller; and that on December 11, 1973, rider to subordination agreement executed by bank, seller, and purchaser provided that agreement should apply only to first $15,000 of purchaser's indebtedness to seller and that priority of claims concerning remainder of such indebtedness should be determined in accordance with UCC Article 9, (1) provisions of UCC Article 1 applied to case, since subordination agreement and rider related to transactions covered by Uniform Commercial Code and rider specifically referred to Article 9; (2) under UCC § 1-103, dealing with application of supplementary principles of law and equity, non-UCC parol evidence rule applied to case; (3) under UCC § 1-205(4), non-UCC parol evidence rule barred parol evidence by bank that rider was intended to grant bank priority as to claims in excess of first $15,000 of purchaser's indebtedness to seller, since such evidence was totally inconsistent with unambiguous terms of rider which were controlling; and (4) even if seller's security interest should fail to meet test for special priority under UCC § 9-312(3), seller's interest would still prevail under first-to-file rule of UCC § 9-312(5). Peoples Bank & Trust v. Reiff, 256 N.W.2d 336 (N.D. 1977).

Defendant finance company did not acquire security interest in two vehicles superior to that of plaintiff bank, by virtue of automobile dealer's execution and filing of inventory security agreements in favor of the defendant covering vehicles, where vehicles had originally been sold by dealer and conditional sales contracts were assigned to plaintiff subject to recourse contract with dealer, where plaintiff had at all times had possession of certificates of ownership for vehicles and was listed as legal owner thereon, where dealer had possession of vehicles as result of their repossession by plaintiff pursuant to recourse agreement following purchasers' defaults, and where plaintiff had demanded, unsuccessfully, that dealer pay balance due on conditional sales contracts as provided by recourse agreement; under UCC § 9-204, dealer, as debtor, did not acquire rights in subject motor vehicles sufficient to transfer valid security interest to defendant; nor could defendant, by advancing flooring money to dealer be considered buyer in ordinary course of business, but was rather financing agency only, excluded from protection created by UCC § 9-307. Mother Lode Bank v. GMAC, 46 Cal. App. 3d 807 (3d Dist. 1975).

Where there are two security interests in the same collateral, and a third person pays the debt of the debtor to the holder of the prior interest based upon order of filing, the third person, despite the fact that he did not take an assignment of the prior interest would upon principles of subrogation, succeed to the rights of the holding of the prior interest provided that the interest of the intervening lienor was not prejudicially affected. This principle of subrogation is not superseded by the Uniform Commercial Code which provides in § 1-103 that unless displaced by the particular provisions of the Code, the principles of law and equity "shall supplement its provisions" because no provision of the Code purports to affect the fundamental equitable doctrine of subrogation. French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 716, 195 N.E.2d 507 (1964).

C. Special Rule as to Crops.

19. In general.

In action for conversion of crops by defendant, where security interests of both plaintiff and defendant in same after-acquired crops of debtor attached under UCC § 9-204(1) and § 9-204(2)(a) at exactly the same time (when crops were planted), and where, because debtor owed installments to plaintiff within six months of planting his crops, defendant's security interest was not entitled to priority under UCC § 9-312(2) over plaintiff's security interest, plaintiff's security interest, which was perfected by filing of financial statement before defendant perfected his security interest by filing such a statement, was entitled under UCC § 9-312(5)(a) to priority over security interest of defendant. United States v. Minster Farmers Coop. Exch., Inc., 430 F. Supp. 566 (N.D. Ohio 1977).

D. Inventory-Secured Purchase Money Security Interests.

20. In general.

In junior mortgagee's action for damages for defendant's alleged impairment of plaintiff's security, where defendant under security agreement with dealer in modular homes had security interest in all of dealer's present or future inventory and also first mortgage on 2.39 acres of land acquired by dealer for use as sales lot, on which dealer installed two modular homes; where plaintiff held second mortgage on dealer's 2.39 acres as security for loan on which dealer defaulted; and where defendant after dealer's default quickly removed modular homes from dealer's lot pursuant to written authorization from officer of dealer's company, (1) homes placed by dealer on sales lot, although installed on concrete foundations and connected to utilities, were inventory and not real property or fixtures under UCC § 9-109(4), since they were goods intended for immediate or ultimate sale; (2) defendant held perfected purchase-money security interest in dealer's inventory under UCC § 9-401(1)(c) and UCC § 9-402(1), which under UCC § 9-312(3) took priority over plaintiff's junior-mortgage interest; and (3) defendant on dealer's default had right to take possession of homes on dealer's lot, since they were inventory collateral. Rakosi v. GECC, 59 A.D.2d 553 (2d Dep't 1977).

UCC § 9-312(3) provides a purchase-money lender with a means of obtaining priority for its purchase-money security interest over the previously perfected security interest of another creditor in the same items or types of inventory that are covered by the purchase-money lender's security interest. Sears, Roebuck & Co. v. Detroit Fed. Sav. & Loan Ass'n, 79 Mich. App. 378, 262 N.W.2d 831 (1977).

21. Time of perfection.

In action by one secured party to replevy common debtor's inventory collateral from defendant second secured party, where (1) defendant's security agreement was executed on June 9, 1975, and defendant thereunder immediately took possession of debtor's inventory collateral, which consisted of automobile parts and accessories, (2) plaintiff previously, on December 15, 1972, had filed financing statement, in which it listed itself as creditor and same person as debtor, which provided that such statement covered debtor's inventory of automobile parts and accessories, (3) plaintiff thereafter executed security agreement with debtor on December 28, 1972 which granted plaintiff continuing security interest in such inventory to secure (a) capital loan note, (b) certain other existing liabilities, including a wholesale account of indebtedness, and (c) all future advances, (4) debtor was constantly indebted to plaintiff from December, 1972, even though debtor fully repaid capital loan note on May 14, 1975, and (5) defendant claimed that since capital loan note (that is, the original indebtedness) had been fully repaid before date on which defendant's security interest attached, plaintiff had ceased to have security interest in debtor's inventory, court held (1) that since UCC § 9-204(3) clearly provides that obligations covered by a security agreement may include future advances, plaintiff's security agreement, because it covered future advances, was still effective, (2) that plaintiff was not required by UCC § 9-402(1) to file second financing statement to give notice of debtor's wholesale account of indebtedness, since UCC § 9-402(1) merely states that financing statement may be filed before security agreement is made or security interest otherwise attaches, which is what had occurred in the present case, and (3) that under UCC § 9-312(5)(a), because plaintiff had filed its financing statement before filing of defendant's financing statement, plaintiff's lien on debtor's collateral was superior to that of defendant. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Secured party who was first to file finance statement covering same inventory included in financing statement subsequently filed by bank had priority over bank, notwithstanding subsequent conduct of secured party. Borg-Warner Acceptance Corp. v. First Nat'l Bank, 307 Minn. 20, 238 N.W.2d 612 (1976).

In order for a purchase money security interest in inventory collateral to have priority over a conflicting security interest in the same collateral the one holding the purchase money security interest must have perfected it at the time the debtor receives possession of the collateral, and, in addition, before the debtor receives possession of the collateral, the holder of the purchase money security interest must notify in proper form any secured party whose interest is known to the holder or who has a financing statement on file. Manufacturers Acceptance Corp. v.

Penning's Sales, Inc., 5 Wash. App. 501, 487 P.2d 1053 (1971).

22. Notice.

The notice requirement of UCC § 9-312(3)(b) and (c) is satisfied by description of collateral as "air conditioners" without listing of serial numbers, and by single notification letter, not repeated each time inventory goods were shipped to a dealer. Fedders Fin. Corp. v. Chiarelli Bros., 221 Pa. Super. 224, 289 A.2d 169 (1972).

23. —Timeliness.

In action by one secured party to replevy common debtor's inventory collateral from defendant second secured party, where (1) defendant's security agreement was executed on June 9, 1975, and defendant thereunder immediately took possession of debtor's inventory collateral, which consisted of automobile parts and accessories, (2) plaintiff previously, on December 15, 1972, had filed financing statement, in which it listed itself as creditor and same person as debtor, which provided that such statement covered debtor's inventory of automobile parts and accessories, (3) plaintiff thereafter executed security agreement with debtor on December 28, 1972 which granted plaintiff continuing security interest in such inventory to secure (a) capital loan note, (b) certain other existing liabilities, including a wholesale account of indebtedness, and (c) all future advances, (4) debtor was constantly indebted to plaintiff from December, 1972, even though debtor fully repaid capital loan note on May 14, 1975, and (5) defendant claimed that since capital loan note (that is, the original indebtedness) had been fully repaid before date on which defendant's security interest attached, plaintiff had ceased to have security interest in debtor's inventory, court held (1) that since UCC § 9-204(3) clearly provides that obligations covered by a security agreement may include future advances, plaintiff's security agreement, because it covered future advances, was still effective, (2) that plaintiff was not required by UCC § 9-402(1) to file second financing statement to give notice of debtor's wholesale account of indebtedness, since UCC § 9-402(1) merely states that financing statement may be filed before security agreement is made or security interest otherwise attaches, which is what had occurred in the present case, and (3) that under UCC § 9-312(5)(a), because plaintiff had filed its financing statement before filing of defendant's financing statement, plaintiff's lien on debtor's collateral was superior to that of defendant. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Under oral agreement for sale of standing timber, seller's purchase money security interest became effective when buyer entered on land and served timber; but this purchase money security interest could only have had priority over other secured party's security interest in buyer's inventory if seller had notified other secured party, which had duly filed financing statement, of her security interest before buyer cut timber and lumber. Barry v. Bank of N.H., 112 N.H. 226, 293 A.2d 755 (1972).

24. —Sufficiency.

Although description of collateral contained in financing statement was standardized provision covering many irrelevant types of collateral, including "all inventory," phrase "all inventory" was sufficient to give other creditors notice that secured party had perfected security interest in not only inventory possessed by debtor at time of execution of security agreement but also inventory acquired thereafter until debt was paid. Thus, although subsequent creditor acquired purchase money security interest in debtor's inventory, subsequent creditor did not have priority of security interest in such inventory under UCC § 9-312 where prior secured party had prior perfected security interest in same inventory, and where subsequent creditor did not perfect its security interest in compliance with UCC § 9-401(1)(c) by filing financing statement in office of secretary of state. Borg-Warner Acceptance Corp. v. Wolfe City Nat'l Bank, 544 S.W.2d 947 (Tex. Civ. App. 1976).

There is no UCC provision requiring that a purchase money security holder provide separate notification to other secured party each time goods are shipped to a debtor; indeed, notification that purchase money security holder "has or expects to acquire, purchase money security interest in certain inventory of [debtor]..." would cover after-acquired inventory reasonably identified in notification letter, and no additional notification should be required to satisfy UCC § 9-312(3)(b) and (c). Fedders Fin. Corp. v. Chiarelli Bros., 221 Pa. Super. 224, 289 A.2d 169 (1972).

Direct specification of "air conditioners" without specifying serial numbers is sufficient identification of inventory involved in purchase money security interest holder's notification letter to other secured party in compliance with UCC § 9-312(3)(b)(c). Fedders Fin. Corp. v. Chiarelli Bros., 221 Pa. Super. 224, 289 A.2d 169 (1972).

25. After-acquired property.

Where manufacturing company, which had been making gun cabinets for another company under contract providing that such other company would furnish basic materials for cabinets, that it reserved title to such materials, and that it would buy assembled cabinets from manufacturer at reduced price, became insolvent and ceased operations after obtaining Small Business Administration loan from two banks that required manufacturer to execute security agreement in their favor in manufacturer's present and after-acquired inventory, and where such banks, after perfecting their security interests in such inventory by filing financial statements that were proper in form, content, and place of filing, attempted to enforce such security interests by taking possession of manufacturer's inventory, as against asserted interest therein of company supplying materials to manufacturer, (1) interest of supplier of materials was purchase-money security interest under UCC § 9-107(b); (2) such interest was not perfected under UCC § 9-304 by filing of financing statement concerning such materials and giving notice of claim thereto; and (3) under UCC § 9-312(3), such unperfected interest had no priority over perfected security interests of banks in such materials (which were part of manufacturer's inventory), where security interests of banks had properly attached under UCC § 9-204(1). Morton Booth Co. v. Tiara Furn., Inc., 564 P.2d 210 (Okla. 1977).

A lien in after-acquired inventory items created by a security agreement under § 9-204(3), if filing requirements are complied with, may be superior to a subsequently acquired contract creditor's lien or other third party claim except those of buyers in ordinary course of business under § 9-307(1) and holders of perfected purchase money security interest under § 9-312(3). Rosenberg v. Rudnick, 262 F. Supp. 635 (D. Mass. 1967).

The rights of a wholesaler who sold two automobiles to a dealer on credit but failed to retain a valid purchase money security interest are subordinate to those of a finance company which had previously perfected its security interest in the dealer's entire present and future inventory of vehicles. McDonald v. Peoples Auto. Loan & Fin. Corp. of Athens, Inc., 115 Ga. App. 483, 154 S.E.2d 886 (1967).

Where a security agreement gave the lender a security interest in the borrower's inventory, including all raw materials, work in progress, finished goods, and all similar goods thereafter acquired including their product and proceeds, the lender's security interest attached not only to raw materials sold to the borrower by a supplier who failed to retain and perfect a purchase-money security interest therein, but the lender's interest also attached to the borrower's finished products which supplier had received in payment; and the lender's rights could not be defeated by application of the equitable doctrine of unjust enrichment. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

A properly recorded bill of sale to secure debt on an inventory, with clauses covering future advances and acquisition of substitute and additional inventory, executed and recorded prior to the adoption of the UCC, does not have to be filed anew under the UCC to preserve its security interest in inventory acquired by the debtor after the effective date of the UCC, and the trial court did not err in ordering the proceeds of the sale of such inventory paid to the holder of the bill of sale to secure debt rather than to holders of security interests, which were not purchase money interests, executed and delivered with filings made thereon after the effective date of the UCC. Charles S. Martin Distrib. Co. v. First State Bank, 114 Ga. App. 693, 152 S.E.2d 599 (1966).

E. Non-Inventory Secured Purchase Money Security Interests.

26. In general.

The bankrupt purchaser of a bookbinding machine received possession of it on the date the last of the 15 crates containing component parts of the machine were delivered to the bankrupt's Maryland plant by common carrier. The date of final installation and completion of tender of delivery terms is irrelevant as to when possession occurs under the code. In re Automated Bookbinding Servs., Inc., 471 F.2d 546 (4th Cir. Md. 1972).

Where lessor leased breeder stock to bankrupt with all progeny to be property of bankrupt and with first lien on progeny being granted under lease to lessor, this lien could not be equated with purchase money security interest, since element of acquiring rights in or use of collateral within meaning of UCC was missing; and lessor acquired nothing more than security interest under lease and was in same position as other suppliers to bankrupt who made swine production operation possible. Ingram v. Ozark Prod. Credit Ass'n, 468 F.2d 564 (5th Cir. Ala. 1972).

Upon delivery of collateral to debtor under oral contract for sale, seller retains only purchase money security interest in collateral; and, absent perfection of purchase money security interest, seller's rights in collateral or proceeds thereof are subordinated to rights of other secured party having prior perfected security interest, regardless of whether seller, by explicit agreement, retained title to goods. First Nat'l Bank v. Smoker, 153 Ind. App. 71, 286 N.E.2d 203 (1972), reh'g denied, 153 Ind. App. 89, 287 N.E.2d 788 (1972).

27. Notice.

Holder of purchase money security interest in noninventory collateral does not need to follow notice procedures required of holders of purchase money security interest in inventory collateral. Brodie Hotel Supply, Inc. v. United States, 431 F.2d 1316 (9th Cir. Alaska 1970).

28. Time of perfection.

Although an insurer had received an assignment from the contractor of the right to receive payments from a specific contract before an insurance company obtained a security interest in the contractor's rights to payments, the company had priority as it had perfected its security interest by complying with Mississippi law. St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank, 882 So. 2d 766 (Miss. 2004).

In an action by a seller of air conditioning equipment against a bank which held a perfected security interest on all after-acquired property belonging to the bankrupt purchaser of the air conditioning equipment, the trial court erred in granting possession of the air conditioning units to the seller where the security agreement held by the bank specifically included after-acquired property, including air conditioning units, and such security agreement had been perfected by being filed with the chancery clerk's office and in the office of the secretary of state of the State of Mississippi four months prior to the sale of the units to the purchaser; nor did the seller attain the status of a purchase money secured party where the conditional sales contracts covering the air conditioning units had not been filed until more than a year after the sale was completed, thereby ignoring the requirements of § 75-9-312(4) requiring perfection of the security interest at the time the debtor received possession of the collateral or within ten days. Peoples Bank & Trust Co. v. Comfort Eng'g Co., 408 So. 2d 1190 (Miss. 1982).

UCC § 9-312(4) provides the seller under a purchase-money contract with the right to retain his priority if he perfects his security interest before delivery or within ten days after delivery. Babson Credit Plan, Inc. v. Cordele Prod. Credit Ass'n, 146 Ga. App. 266, 246 S.E.2d 354 (1978).

Buyer of business machines was not "debtor" of seller under UCC § 9-105(1) until execution and delivery of security interest agreement where buyer received machines to test usage prior to execution and delivery of agreements, and where obtaining of outside financing by buyer was condition precedent to ultimate purchase; thus, financing statements filed within ten days after execution and delivery of purchase money security interest agreements complied with ten-day requirement of UCC § 9-312(4) and were entitled to priority over prior chattel mortgage security agreement containing after-acquired equipment security clause. In re Ultra Precision Indus., Inc., 503 F.2d 414 (9th Cir. Cal. 1974).

Secured party acquired "purchase money security interest" in skidder (a piece of logging equipment), which was properly classified by trial court as "collateral other than inventory" within UCC § 9-109, and perfected this interest within 10 days of date that debtor received possession of collateral, so that holder of purchaser money security interest had priority over other conflicting security interest as to collateral under UCC § 9-312(4). International Harvester Credit Corp. v. Commercial Credit Equip. Corp., 125 Ga. App. 477, 188 S.E.2d 110 (1972).

Perfected purchase money security interest in automobile, not sold in ordinary course of business and therefore not inventory, has priority over seller's later perfected security interest both from standpoint of filing time and under Code § 9-312(4). National Bank of Commerce v. First Nat'l Bank & Trust Co., 446 P.2d 277, 30 A.L.R.3d 1 (Okla. 1968).

As to the conditional sale of a cash register to a restaurant owner, it was said that the conditional seller could have completely protected himself under subsection (4) of the instant section by perfecting his interest before or within ten days of the delivery of the cash register. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

29. Type of collateral.

Even if financing statement covering lumber had not been "duly" filed by bank, bank's security interest, which was perfected at very latest upon its taking possession of lumber, would still be superior to plaintiff's purchase money security interest in lumber, which had never been perfected by filing or otherwise. Barry v. Bank of N.H., 113 N.H. 158, 304 A.2d 879 (1973).

30. —Equipment.

In determining priorities under Article 9, since defendant failed to file a financing statement at the time the debtor received possession of the equipment or within 10 days thereafter, plaintiff had priority over defendant as to the equipment described in the lease agreement between defendant and debtor. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

31. —Consumer goods.

Failure of seller of appliances and carpeting, purchased by debtor for installation in debtor's condominium apartment project, (1) to perfect its purchase-money security interest in such goods before delivery of goods to debtor, and (2) seller's failure to notify bank, which held valid, previously perfected security interest in all appliances, carpeting, drapes, and similar goods that might come into debtor's possession for use in such condominium project, of seller's purchase-money security interest in goods sold to debtor before debtor received possession of goods, was fatal under UCC § 9-312(3) and § 9-312(5)(a) to seller's claim that its purchase-money security interest in goods sold had priority over bank's perfected security interest in such goods. Sears, Roebuck & Co. v. Detroit Fed. Sav. & Loan Ass'n, 79 Mich. App. 378, 262 N.W.2d 831 (1977).

32. After-acquired property.

In an action by a seller of air conditioning equipment against a bank which held a perfected security interest on all after-acquired property belonging to the bankrupt purchaser of the air conditioning equipment, the trial court erred in granting possession of the air conditioning units to the seller where the security agreement held by the bank specifically included after-acquired property, including air conditioning units, and such security agreement had been perfected by being filed with the chancery clerk's office and in the office of the secretary of state of the State of Mississippi four months prior to the sale of the units to the purchaser; nor did the seller attain the status of a purchase money secured party where the conditional sales contracts covering the air conditioning units had not been filed until more than a year after the sale was completed, thereby ignoring the requirements of § 75-9-312(4) requiring perfection of the security interest at the time the debtor received possession of the collateral or within ten days. Peoples Bank & Trust Co. v. Comfort Eng'g Co., 408 So. 2d 1190 (Miss. 1982).

In dispute over proceeds of tractors subject to both "after-acquired property" clause under UCC § 9-204(3) and purchase money security interest, purchase money security interest was subordinated to other security interest where, under UCC § 9-312(4), debtor possessed equipment for more than 10 days prior to filing of financing statement. James Talcott, Inc. v. Associates Capital Co., 70 Ohio Op. 2d 295, 491 F.2d 879 (6th Cir. Ohio 1974).

33. Priority as to lien creditors.

Absent evidence to indicate that furniture retailer, who held perfected purchase money security interest in stored furniture, delivered or entrusted furniture to debtor's wife with actual or apparent authority to store furniture, or any evidence which would indicate that retailer acquiesced in procurement by debtor's wife of any document of title, under UCC §§ 9-310, 7-209, and 7-503, security interests of furniture retailer took priority over warehouseman's subsequent lien for storage charges. K Furn. Co. v. Sanders Transf. & Storage Co., 532 S.W.2d 910 (Tenn. 1975).

Filing of lease with county clerk and proper recordation in county deed book does not effectuate perfected security interest where filing party did not direct the clerk to record the lease as a filing statement when the filing fee was paid. It is implicit in the Kentucky statutory scheme that if a party intends a single document to serve multiple purposes and where each purpose requires recording to effectuate its validity, duplicate instruments must be supplied and the clerk must be informed as to the purpose for which each is to be recorded. In re Leckie Freeburn Coal Co., 405 F.2d 1043 (6th Cir. Ky. 1969), cert. denied, 395 U.S. 960, 89 S. Ct. 2101, 23 L. Ed. 2d 746 (1969).

Carpeting furnished to a non-profit corporation was capable of being construed as a fixture, and an unrecorded "conditional sales contract note" covering the carpeting was insufficient to create a security interest which would take priority over an encumbrance created by a prior deed of trust containing an after-acquired property provision. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

A seller of automobile tires on a conditional sale, could not assert his interest against a third person, when the seller had failed to file notice of his security interest. Ludlow Rubber Co. v. Mack Truck Sales, Inc., 38 Mass. App. Dec. 78 (1967).

F. Decisions Under Former Statutes.

34. In general.

Where an automobile dealer and a finance company choose to do business under the method provided by the Uniform Trust Receipts Act, the finance company cannot assert that it has a purchase money lien under Code 1942, § 337 which is prior to any lien created by the levy of execution by a judgment creditor. Murdock Acceptance Corp. v. Woodham, 208 So. 2d 56 (Miss. 1968).

Where personal property had been seized by the sheriff in satisfaction of enrolled judgment liens of the state tax commission and placed in the lawful possession of the sheriff to satisfy the tax lien judgments, the purchase money lien of the seller of part of the seized property ceased to exist when possession of the property was transferred from the original purchaser to the sheriff who had no notice of the existence of the statutory vendor's lien. Paper Prods. Co. v. Mississippi State Tax Comm'n, 206 So. 2d 635 (Miss. 1968).

The legislature did not intend by the enactment of Code 1942, § 851, to subordinate the vendor's lien created by Code 1942, § 337, to the lien of a prior chattel mortgage on after acquired property executed under the authority of Code 1942, § 851, and thereby permit the holder of such prior chattel mortgage to take property that had not been paid for, while still in the hands of the first purchaser, and appropriate it to the payment of the chattel mortgage indebtedness and thereby defeat the vendor's purchase money lien.

Trenton Lumber Co. v. Boling, 230 Miss. 233, 92 So. 2d 440 (1957).

Where the holder of a mortgage deed of trust, covering after acquired property of the purchaser, was charged with notice of the general custom of the lumber trade that planing mill operators, such as the purchaser, paid for rough lumber delivered at the mill by small operators at the end of the week rather than at the time of delivery, it was not in position to claim lack of notice that certain lumber delivered to purchaser by the vendors had not been paid for, and that it had a right to take the lumber and apply it to purchaser's indebtedness without making payment therefor, since the vendors had not lost their purchase money liens. Trenton Lumber Co. v. Boling, 230 Miss. 233, 92 So. 2d 440 (1957).

Since the purchasers' employees had performed no service in the production of the rough lumber, the employees liens were inferior to the vendors' purchase money liens. Trenton Lumber Co. v. Boling, 230 Miss. 233, 92 So. 2d 440 (1957).

One who claims his mechanic's lien on motor truck for its repair is superior to lien retained for unpaid purchase price has burden of establishing that labor and materials furnished constitute repairs, as distinguished from articles purchased for truck or fuel to enable it to operate, and that such repairs were reasonably necessary to preserve truck and permit its ordinary operation and prevent deterioration. Funchess v. Pennington, 205 Miss. 500, 39 So. 2d 1 (1949).

A garageman surrendering possession of a repaired truck to its owner did not thereby lose his lien as against the holder of a deed of trust embracing the truck where there had been no breach of condition or foreclosure of the deed of trust. Watson v. Broadhead, 203 Miss. 142, 33 So. 2d 302 (1948).

RESEARCH REFERENCES

ALR. Automobiles: priorities as between vendor's lien and subsequent title or security interest obtained in another state to which vehicle has been removed. 42 A.L.R.3d 1168.

Equitable estoppel of secured party's right to assert prior, perfected security interest against other secured creditor or subsequent purchaser under Article 9 of Uniform Commercial Code. 9 A.L.R.5th 708.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 740 et seq.

Priorities of security interests; among conflicting interests in same collateral, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:391-9:396.

Priorities among conflicting security interests in the same collateral, 19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3531 et seq.

CJS. 79 C.J.S., Secured Transactions §§ 102-106.

Law Reviews. Ownership of Crops on Foreclosed Land, Priority of After-Acquired Property Clauses in Farm Bankruptcies. 58 Miss. L. J. 481, Winter 1988.

§ 75-9-323. Future advances.

(a) Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under Section 75-9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under Section 75-9-309 when it attaches; or

(B) Temporarily under Section 75-9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 75-9-309 or 75-9-312(e), (f), or (g).

(b) Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five (45) days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five (45) days after the purchase.

(e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five (45) days after the lease contract becomes enforceable.

(g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

SOURCES: Derived from former 1972 Code §§ 75-9-301 [Codes, 1942, § 41A:9-301; Laws, 1966, ch. 316, § 9-301; Laws, 1977, ch. 452, § 14; Laws, 1986, ch. 343, § 1; Laws, 1996, ch. 468, § 62, eff from and after July 1, 1996], 75-9-307 [Codes, 1942, § 41A:9-307; Laws, 1966, ch. 316, § 9-307; Laws, 1977, ch. 452, § 19; Laws, 1986, ch. 482, § 1, eff from and after December 24, 1986 (the date Section 1324 of the Food Security Act of 1985 became effective)], and 75-9-312 [Codes, 1942, § 41A:9-312; Laws, 1966, ch. 316, § 9-312; Laws, 1977, ch. 452, § 21; Laws, 1986, ch. 343, § 2; Laws, 1990, ch. 384, § 54; Laws, 1996, ch. 468, § 69, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-324. Priority of purchase-money security interests.

(a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 75-9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 75-9-330, and, except as otherwise provided in Section 75-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under Section 75-9-312(f), before the beginning of the twenty-day period thereunder.

(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 75-9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six (6) months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under Section 75-9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 75-9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one (1) security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, Section 75-9-322(a) applies to the qualifying security interests.

SOURCES: Derived from former 1972 Code § 75-9-312 [Codes, 1942, § 41A:9-312; Laws, 1966, ch. 316, § 9-312; Laws, 1977, ch. 452, § 21; Laws, 1986, ch. 343, § 2; Laws, 1990, ch. 384, § 54; Laws, 1996, ch. 468, § 69, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Purchase-money security interest, see § 75-9-103.
Scope of Article, see § 75-9-109.

§ 75-9-324A. Priority of production-money security interests and agricultural liens.

(a) Except as otherwise provided in subsections (c), (d), and (e), if the requirements of subsection (b) are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in Section 75-9-327, also has priority in their identifiable proceeds.

(b) A production-money security interest has priority under subsection (a) if:

(1) The production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) The production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than ten (10)

or more than thirty (30) days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) The notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Except as otherwise provided in subsection (d) or (e), if more than one (1) security interest qualifies for priority in the same collateral under subsection (a), the security interests rank according to priority in time of filing under Section 75-9-322(a).

(d) To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under Section 75-9-322(a).

(e) To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — Purchase-money security interest, see § 75-9-103.

§ 75-9-325. Priority of security interests in transferred collateral.

(a) Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Subsection (a) subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under Section 75-9-322(a) or 75-9-324; or

(2) Arose solely under Section 75-2-711(3) or 75-2A-508(5).

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-326. Priority of security interests created by new debtor.

(a) Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 75-9-316(i)(1) or 75-9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 9, eff from and after July 1, 2013.

§ 75-9-327. Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under Section 75-9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under Section 75-9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under Section 75-9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

SOURCES: Derived from former 1972 Code § 75-9-115 [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-328. Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under Section 75-9-106 has priority over a security

interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under Section 75-9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under Section 75-8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under Section 75-8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under Section 75-8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Section 75-9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under Section 75-9-313(a) and not by control under Section 75-9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 75-9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by Sections 75-9-322 and 75-9-323.

SOURCES: Derived from former 1972 Code § 75-9-115 [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-329. Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under Section 75-9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under Section 75-9-314 rank according to priority in time of obtaining control.

SOURCES: Derived from former 1972 Code § 75-9-115 [Laws, 1996, ch. 468, § 59, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-330. Priority of purchaser of chattel paper or instrument.

(a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 75-9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 75-9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in Section 75-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 75-9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in Section 75-9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

SOURCES: Derived from former 1972 Code § 75-9-308 [Codes, 1942, § 41A:9-308; Laws, 1966, ch. 316, § 9-308; Laws, 1977, ch. 452, § 20, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Rights of holder of negotiable instruments paper, see § 75-3-301 et seq.

Rights and title resulting from transfer of negotiable documents of title, see § 75-7-502 et seq.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-308.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-308.

6. In general.

Where finance company entered into agreement with mobile home dealer under which finance company agreed to finance dealer's inventory of mobile homes, where dealer delivered to finance company certain manufacturer's certificates of origin on mobile homes to secure re-payment of loans, and gave finance company security interest in vehicles by way of security agreement between parties, where four mobile homes were sold by dealer in regular course of his business to certain individuals on security agreement contracts, which were then sold and assigned to bank in ordinary course of its business, but where dealer did not use these funds to pay off its outstanding loans owed to finance company, bank's security interest in four mobile homes took priority over finance company's interest therein, notwithstanding bank had knowledge of security interest claimed by finance company; under UCC § 9-308, bank was purchaser of chattel paper, it gave "new value" for four security agreements it purchased from dealer, bank purchased security agreements in ordinary course of its business, and security interest claimed by finance company was claimed "merely as proceeds of inventory subject to a security interest." Rex Fin. Corp. v. Great W. Bank & Trust, 23 Ariz. App. 286, 532 P.2d 558 (1975).

Under UCC § 9-308, where a purchaser of chattel paper gives new value and takes possession of it in the ordinary course of his business he has priority over a security interest in the chattel paper which is claimed as proceeds of inventory, and this is true even though the purchaser knows that the specific paper is subject to a security interest in favor of an inventory secured party. Commercial Credit Corp. v. National Credit Corp., 251 Ark. 541, 473 S.W.2d 876 (1971).

A bank which had previously noted its security interest on the DX title to an automobile which was sold by a dealer in the ordinary course of business lost its security interest in the chattel paper which represented part of the proceeds of the automobile's sale when, in conformity with this section, the dealer sold the chattel paper to a discounter; and the bank's interest thereupon shifted to the proceeds of the sale of the paper received by the dealer. Associates Disct. Corp. v. Old Freeport Bank, 421 Pa. 609, 220 A.2d 621 (1966).

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of statute respecting sale, assignment, or transfer of retail instalment contracts. 10 A.L.R.2d 447.

Transferee of commercial paper given by purchaser of chattel and secured by conditional sale, retention of title, or chattel mortgage, as subject to defenses which chattel purchaser could assert against seller. 44 A.L.R.2d 8.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 99 et seq., 210 through 215.

11 Am. Jur. 2d, Bills and Notes §§ 237, 277.

68A Am. Jur. 2d, Secured Transactions § 824 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:491-9:493 (priorities and protection of purchasers; chattel paper and instruments).

CJS. 6A C.J.S., Assignments § 90 et seq.

10 C.J.S., Bills and Notes §§ 127, 128.

§ 75-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8.

(a) This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7 and 8.

(b) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

(c) Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

SOURCES: Derived from former 1972 Code § 75-9-309 [Codes, 1942, § 41A:9-309; Laws, 1966, ch. 316, § 9-309; Laws, 1990, ch. 384, § 53; Laws, 1996, ch. 468, § 68, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Negotiable instruments, see § 75-3-101 et seq.

Documents of title, see § 75-7-101 et seq.

Investment securities, see § 75-8-101 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-309.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-309.

6. In general.

Where, after bank perfected security interest in company's accounts and their proceeds, company induced debtor to pay his account by giving promissory note for amount owed, and negotiated this note to defendant, defendant did not have actual notice of bank's security interest, was holder in due course, and had priority with respect to note and cash payment over bank's earlier perfected security interest. Citizens Valley Bank v. Pacific Materials Co., 263 Or. 557, 503 P.2d 491 (1972).

A purchaser who has paid a factor for the seller (which factor has a security interest in the invoice) has no claim against the factor for the seller's default; he can look to the seller only. Nor can a claim against a factor be based on payment due to a mistake if the alleged mistake is that the buyer believed the seller would perform or had performed. Crompton-Richmond Co. v. Raylon Fabrics, Inc., 33 A.D.2d 741 (1st Dep't 1969).

RESEARCH REFERENCES

ALR. Transferee of commercial paper given by purchaser of chattel and secured by conditional sale, retention of title, or chattel mortgage, as subject to defenses which chattel purchaser could assert against seller. 44 A.L.R.2d 8.

Am Jur. 11 Am. Jur. 2d, Bills and Notes §§ 390-391, 393, 395, 396.

13 Am. Jur. 2d, Carriers §§ 345, 346.

18A Am. Jur. 2d, Corporations §§ 21, 674 et seq.

68A Am. Jur. 2d, Secured Transactions § 828.

78 Am. Jur. 2d, Warehouses §§ 51, 55 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:501, 9:502 (priorities and protection of purchasers; instruments and documents).

CJS. 10 C.J.S., Bills and Notes §§ 127, 128, 169, 170, 175, 184, 189.

13 C.J.S., Carriers §§ 384-389.

18 C.J.S., Corporations § 285 et seq.

93 C.J.S., Warehousemen and Safe Depositaries §§ 54-64.

§ 75-9-332. Transfer of money; transfer of funds from deposit account.

(a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-333. Priority of certain liens arising by operation of law.

(a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

SOURCES: Derived from former 1972 Code § 75-9-310 [Codes, 1942, § 41A:9-310; Laws, 1966, ch. 316, § 9-310, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Right of innocent secured party upon forfeiture of encumbered conveyance for unlawful possession of alcoholic beverages, see § 67-1-17.

Scope of this chapter, see § 75-9-109.

Statutory liens, generally, see § 85-7-1 et seq.

Landlord's lien, see §§ 89-7-51, 89-7-53.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-310.

6. In general.
7. Construction with other laws.
8. —Federal law.
9. —Pre-code law.
10. Ordinary course of business.
11. Enhancement or preservation.
12. Possession.
13. Consent or lack thereof.
14. Common law liens.
15. Statutory liens.
16. Express exceptions.
17. Particular liens prior.
18. —Builders or the like.
19. —Garagemen or the like.
20. Particular liens subject.
21. Remedies in satisfaction of liens.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-310.

6. In general.

It seems highly questionable that a landlord's lien may come within this section as a lien for "services or materials" in the light of the distinction drawn between such liens and that of a landlord in § 9-104, and the further fact that leasing of the premises does not enhance or preserve the value of the collateral situated thereon. In re Einhorn Bros., 171 F. Supp. 655 (E.D. Pa. 1959), aff'd, 272 F.2d 434 (3d Cir. Pa. 1959).

7. Construction with other laws.

Observing that the only construction of this section that makes it compatible with the Ohio certificate of title law would be one which considers that the first use in this section of the word "lien" refers to the claim of the laborer or materialman in possession, and that the second use of the word "lien" therein refers to the claim of the secured interest, the court held that inasmuch as the title law gave priority to a properly noted security interest such an interest takes precedence over an artisan's lien. Commonwealth Loan Co. v. Downtown Lincoln Mercury Co., 4 Ohio App. 2d 4, 211 N.E.2d 57 (1964).

8. —Federal law.

In action between bank which held prior federally recorded security interest in airplane and bailee which held possessory lien for storage charges, under UCC §§ 9-104(c) and 9-310, possessory lien had priority over bank's interest. Industrial Nat'l Bank v. Butler Aviation Int'l, Inc., 370 F. Supp. 1012 (E.D.N.Y. 1974).

As security interests in aircraft are not subject to Article 9, the provisions of UCC § 9-310 do not confer any priority to the lien of a repairman over a federally-recorded security interest in the aircraft.

Smith v. Eastern Airmotive Corp., 99 N.J. Super. 340, 240 A.2d 17 (Ch. Div. 1968).

9. —Pre-code law.

Colorado version of Code § 9-310 (differing from "official" or "uniform" law) provides that repairman's lien does not take priority over perfected security interest, such as prior recorded chattel mortgage, thereby retaining pre-Code order of priorities. First Sec. Bank v. Crouse, 374 F.2d 17 (10th Cir. Colo. 1967).

Chattel mortgages on a tractor which were executed and recorded prior to the effective date of the UCC, at a time when by statute such security interests had priority over mechanic's liens, were held to have priority over a mechanic's lien for services performed after the effective date of the act, for to hold otherwise would violate constitutional provisions prohibiting the passage of any law impairing the obligations of contract. First Nat'l Bank v. Bahan, 26 Ohio Op. 2d 429, 198 N.E.2d 272 (1964).

10. Ordinary course of business.

Person who furnishes materials or service with respect to goods that are already subject to perfected security interest is not engaged in ordinary course of his business under Code § 9-310 with respect to any part of his charges that is unreasonable. Mousel v. Daringer, 190 Neb. 77, 206 N.W.2d 579 (1973).

Garageman's lien for auto storage charges takes priority over finance company's perfected security interest, where there was no showing that lien was lien on goods for services performed in ordinary course of business. Charlie Eidson's Paint & Body Shop, Inc. v. Commercial Credit Plan, Inc., 146 Ind. App. 209, 253 N.E.2d 717 (1969).

11. Enhancement or preservation.

Under Code § 9-310, claims arising from work intended to enhance or preserve value of collateral take priority over earlier perfected security interest even though artisan's services or materials were furnished without knowledge or approval of secured parts. Manufacturers Acceptance Corp. v. Gibson, 220 Tenn. 654, 422 S.W.2d 435 (1967).

Repairman who enhanced value of bulldozer by labor and materials had common-law artisan's lien on bulldozer and, under Code § 9-310, priority over prior perfected security interest of seller of bulldozer. Ferrante Equip. Co. v. Foley Mach. Co., 49 N.J. 432, 231 A.2d 208 (1967).

Under Code § 9-310, mechanic's lien of automobile repair shop had lien priority over security interest of bank which had financed purchase of automobile, even though work performed by repair shop did not enhance value of automobile. Philadelphia Nat'l Bank v. Keough, 55 Del. C. R. 88 (Pa. 1967).

12. Possession.

Where (1) plaintiff Farmers Home Administration (FHA) perfected security interest in debtor's tractor on February 2, 1972, (2) defendant mechanic performed repairs totalling $1,607.47 on such tractor on six occasions between December 29, 1972 and December 21, 1973, returning tractor to debtor's possession after each repair job was completed, and (3) defendant, after performing seventh repair job amounting to $543.81, retained possession of tractor on debtor's failure to pay accumulated repair bill, defendant under UCC § 9-310 had lien on tractor that took priority over plaintiff's perfected security interest therein to extent of amount ($543.81) owed for seventh repair job. However, defendant's lien did not have priority over plaintiff's security interest insofar as first six repair jobs were concerned, since defendant did not retain continuous actual or constructive possession of tractor after such jobs were completed but returned it to debtor on each occasion. United States v. Kimbell Foods, Inc., 440 U.S. 715, 99 S. Ct. 1448, 59 L. Ed. 2d 711 (1979), on remand, 600 F.2d 478 (5th Cir. Ga. 1979).

Under UCC § 9-310 and mechanic's lien statute providing that if lienholder parts with possession of repaired property, lienholder retains lien while property is in hands of owner or one deriving title or possession through owner with notice that repair bill is unpaid, lien of repairman who was in possession of crawler-tractor on which he had made repairs had priority over prior perfected security interest of owner-lessor of tractor. Thorp Com. Corp. v. Mississippi Rd. Supply Co., 348 So. 2d 1016 (Miss. 1977).

Uniform Commercial Code is totally inapplicable to nonpossessory liens and question of their priority in relation to secured interests must be determined by existing statutes and pre-code case law. Leger Mill Co. v. Kleen-Leen, Inc., 563 P.2d 132 (Okla. 1977).

Automobile repairmen did not lose their possessory lien when owner of automobile took car from their possession without their consent. Finch v. Miller, 271 Or. 271, 531 P.2d 892 (1975).

Garageman who acquires valid lien for towing, repairing and storing automobile has priority over previously perfected security interest while automobile is in possession of garageman, under Code § 9-310. Commerce Acceptance of Okla. City, Inc. v. Press, 428 P.2d 213 (Okla. 1967).

Under an Illinois statute in effect prior to 1965, a party who had furnished services and materials in the ordinary course of his business for the repair of an automobile and had retained possession of it had a lien under this section superior to the lien of a prior instalment sales contract. Westlake Fin. Co. v. Spearmon, 64 Ill. App. 2d 342, 213 N.E.2d 80 (1st Dist. 1965).

13. Consent or lack thereof.

Plaintiff's prior perfected security interest in an automobile which was purchased by defendant at a public auction subject to the security interest and then stored by defendant at codefendant's garage, is superior to the subsequent bailee's lien for garage storage charges; section 9-310 of the Uniform Commercial Code, which provides that the lien of an individual in possession of goods for which he furnished some service or materials in the course of his business takes priority over a perfected security interest in such goods, is inapplicable since plaintiff neither requested nor consented to the storage of the vehicle (Lien Law, § 184) and cannot incur any liability for the storage charges by reason of defendant's having stored the vehicle at a garage; since the lien for storage charges was incurred at the specific request of defendant, who had full knowledge that the sale of the vehicle was subject to plaintiff's security interest, she appears to be the party liable for the storage charges. O'Connor v. B.J. Auto Make Ready Corp., 101 Misc. 2d 665 (1979), modified, 115 Misc. 2d 575, 455 N.Y.S.2d 164 (1982).

Under UCC § 9-310, common law possessory mechanic's lien had priority over prior perfected security interest, notwithstanding lien statute provided that statutory lien was subordinate to buyer prior perfected security interest unless secured party authorized repairs, since statutory lien was not possessory lien and UCC § 9-310 applies only to possessory liens. Peavy's Serv. Ctr., Inc. v. Associates Fin. Servs. Co., 335 So. 2d 169 (Ala. Civ. App. 1976), cert. denied, 335 So. 2d 172 (Ala. 1976).

Under UCC § 9-310, mechanic's possessory lien on boat had priority over credit union's prior recorded security interest, notwithstanding that lien statute provided that lien shall continue as long as possession continues but not to exceed three months and notwithstanding that mechanic's possession continued beyond three months following completion of work, where owner of boat permitted mechanic to retain possession beyond the three month period and mechanic was in possession of boat at time credit union filed foreclosure suit. Eastern Airlines Emp. Fed. Credit Union v. Lauderdale Yacht Basin, Inc., 334 So. 2d 175 (Fla. App. 1976).

By Code § 9-310, automobile repair shop with valid possessory lien for labor, materials, and storage in connection with repairs ordered by record owner of auto had priority over secured party under sales contract, notwithstanding notation of latter encumbrance on certificate of title. First Nat'l Bank v. Vargo Motor Co., 43 Pa. D. & C.2d 698 (1966).

14. Common law liens.

Under UCC § 9-310, automobile repair shop's lien on automobile took priority over another creditor's earlier perfected security interest in automobile since automobile repair shop's lien was common law possessory lien for services and materials in connection with repairs it made on automobile. National Bank v. Bergeron Cadillac, Inc., 66 Ill. 2d 140, 361 N.E.2d 1116 (1977).

An artisan's lien to the extent that it affects motor vehicles is a common-law lien and hence does not fall within the exception of this section. Commonwealth Loan Co. v. Berry, 2 Ohio St. 2d 169, 207 N.E.2d 545 (1965).

15. Statutory liens.

As to building contract funds owing to bankrupt general contractor, subcontractor had priority, under state's mechanics' lien trust statute, over construction finance agency's prior perfected security interest in general contractor's present and future accounts receivable where finance agency failed to show whether, and to what extent, loan proceeds were used to pay subcontractor. National Bank v. Eames & Brown, Inc., 396 Mich. 611, 242 N.W.2d 412 (1976).

As the federal statute preempts the field of security interests in aircraft a recorded security interest in an aircraft prevails over an unrecorded possessors mechanics' lien. Smith v. Eastern Airmotive Corp., 99 N.J. Super. 340, 240 A.2d 17 (Ch. Div. 1968).

Where the law of the state permits an artisan's lien for storage, as against the contention that there can only be a lien when the value is increased, the priority of the lien is determined by UCC § 9-310. Philadelphia Nat'l Bank v. K & G Speed Assocs., 43 Pa. D. & C.2d 241 (1967).

16. Express exceptions.

Under UCC § 9-310, secured party, who had perfected security interest in trailer, was entitled to possession as against repairman who retained possession of trailer pursuant to statutory lien, where statute creating lien provided, inter alia, that lienor took subject to "other titles, interests, liens, or charges in the same manner that a purchaser would take." Fruehauf Corp. v. Huntington Moving & Storage Co., 159 W. Va. 14, 217 S.E.2d 907 (1975).

In a case arising prior to the effective date of the Colorado UCC and decided under the statutes of that state in which it was held that where the fact of the existence of a chattel mortgage had been noted on the certificate of title of a motor truck, the lien of the assignee of the security interest was superior to the lien of a garageman who had subsequently furnished labor and materials in repairing the vehicle, the court observed that unlike the form in which this section has generally been enacted, the section in the Colorado UCC provides that a repairman's lien "does not take priority over a perfected security interest unless a statute expressly provides otherwise." First Sec. Bank v. Crouse, 374 F.2d 17 (10th Cir. Colo. 1967).

17. Particular liens prior.

Although assignee of claims of medical assistance supplier could not enforce assignment against county department of social services, assignment was enforceable as to all others, and, by filing its security interest in claims prior in time to State's tax warrant, assignee's claim took priority over State's claim for withholding taxes. IMFC Professional Servs., Inc. v. State, 59 A.D.2d 1047 (4th Dep't 1977).

Under UCC § 9-310, prior perfected security interest in rock crushing equipment took priority over nonpossessory artisan's lien for repairs on such equipment. Balzer Mach. Co. v. Klineline Sand & Gravel Co., 271 Or. 596, 533 P.2d 321 (1975).

Where assignment transferred significant part of outstanding contract rights to bank, bank was required to file financing statement in order to perfect its security interest under UCC § 9-302, and, where bank failed to perfect security interest until after filing and recording of materialmen's liens, bank was not entitled to priority over liens under UCC § 9-310. Park Ave. Bank v. Bassford, 232 Ga. 216, 205 S.E.2d 861 (1974).

18. —Builders or the like.

Money "constructively" paid to contractor (i.e., money actually owed to contractor) was subject to lien in favor of labor union and pension fund trusts created by Michigan Builders Trust Fund Act and this lien was superior to security interest of bank, although security interest was perfected under Article 9 of Uniform Commercial Code, as long as secured party could not prove that money lent to contractor under terms of security agreement was, in fact, used to pay laborers, materialmen and others on construction project. Detroit Metro. Area Executive Comm. of Bricklayers v. Leto Constr. Co., 423 F. Supp. 701 (E.D. Mich. 1976).

Mechanic's lien, filed by subcontractor to secure payment of amount due from general contractor, was superior to bank's perfected security interest in general contractor's accounts receivable; when general contractor failed to pay subcontractor and subcontractor filed written mechanic's lien upon subject property, owner of property became directly obligated to pay subcontractor; thus, sum which otherwise would have been due general contractor under contract ceased to be part of general contractor's "contract right" and therefore did not become "accounts receivable" covered by security agreement executed by general contractor in favor of bank. Citizens Fid. Bank & Trust Co. v. Fenton Rigging Co., 522 S.W.2d 862 (Ky. 1975).

19. —Garagemen or the like.

Under UCC § 9-310 possessory mechanic's lien on motor vehicle was entitled to priority over bank's perfected security interest in vehicle. Krueger v. Texas State Bank, 528 S.W.2d 121 (Tex. Civ. App. 1975).

Under UCC § 9-310, lender's security interest in motor vehicle, evidenced by lien notation recorded on face of title certificate, was inferior to subsequent mechanic's lien for automobile repairs. Nelms v. Gulf Coast State Bank, 516 S.W.2d 421 (Tex. Civ. App. 1974), aff'd, 525 S.W.2d 866 (Tex. 1975).

By virtue of UCC § 9-310, subsequent mechanic's lien for repairs to airplane which was in possession of repairman, arising under state law, took priority over prior security interest in airplane that was recorded pursuant to federal law. Carolina Aircraft Corp. v. Commerce Trust Co., 289 So. 2d 37 (Fla. App. 1974).

Under this section, when a garageman acquires a valid lien for towing, repairing, and storing an automobile, and retains possession of it for the unpaid charges, such lien has priority over a previously perfected security interest while the automobile is in the possession of the garageman. Commerce Acceptance of Okla. City, Inc. v. Press, 428 P.2d 213 (Okla. 1967).

A common-law artisan's lien, asserted by the repairman of an automobile, has priority over a prior perfected security interest of the finance company in the automobile. Manufacturers Acceptance Corp. v. Gibson, 220 Tenn. 654, 422 S.W.2d 435 (1967).

A bulldozer is not a motor vehicle within the contemplation of the New Jersey garage keepers lien act, and a repairman who retained a bulldozer in his possession after enhancing its value through labor and materials was entitled to a common law artisan's lien which was superior to the previously perfected security interest of the conditional seller. Ferrante Equip. Co. v. Foley Mach. Co., 49 N.J. 432, 231 A.2d 208 (1967).

Under this section and section 184 of the Lien Law artisan's lien for automobile repair had priority over automobile purchase lien arising out of installment sales contract which was in default. Schleimer v. Arrowhead Garage, Inc., 46 Misc. 2d 607 (1965), aff'd, 49 Misc. 2d 775, 267 N.Y.S.2d 995 (1966).

A mechanic's lien for repairing an automobile takes priority over a perfected security interest previously existing. Corbin Deposit Bank v. King, 384 S.W.2d 302 (Ky. 1964).

20. Particular liens subject.

Although assignee of claims of medical assistance supplier could not enforce assignment against county department of social services, assignment was enforceable as to all others, and, by filing its security interest in claims prior in time to State's tax warrant, assignee's claim took priority over State's claim for withholding taxes. IMFC Professional Servs., Inc. v. State, 59 A.D.2d 1047 (4th Dep't 1977).

Absent evidence to indicate that furniture retailer, who held perfected purchase money security interest in stored furniture, delivered or entrusted furniture to debtor's wife with actual or apparent authority to store furniture, or any evidence which would indicate that retailer acquiesced in procurement by debtor's wife of any document of title, under UCC §§ 9-310, 7-209, and 7-503, security interests of furniture retailer took priority over warehouseman's subsequent lien for storage charges. K Furn. Co. v. Sanders Transf. & Storage Co., 532 S.W.2d 910 (Tenn. 1975).

As security interests in aircraft are not subject to Article 9, the provisions of UCC § 9-310 do not confer any priority to the lien of a repairman over a federally-recorded security interest in the aircraft. Smith v. Eastern Airmotive Corp., 99 N.J. Super. 340, 240 A.2d 17 (Ch. Div. 1968).

As the federal statute preempts the field of security interests in aircraft a recorded security interest in an aircraft prevails over an unrecorded possessors mechanics' lien. Smith v. Eastern Airmotive Corp., 99 N.J. Super. 340, 240 A.2d 17 (Ch. Div. 1968).

The lien of a common carrier for the cost of transporting a house trailer from Virginia to Oklahoma was subordinate to a prior security interest perfected in Virginia of which the carrier was charged with notice. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966).

Under Alaska law the possessory lien of an artisan is subordinate to the lien of the holder of a perfected security interest. Decker v. Aurora Motors, Inc., 409 P.2d 603 (Alaska 1966).

21. Remedies in satisfaction of liens.

Sale of airplane under Florida mechanic's lien statute by mechanic in possession of plane did not extinguish prior security interest that had previously been perfected by recordation with Federal Aviation Administration Registry, where such sale was conducted without notice to holder of prior lien, since such a rule would unconstitutionally deprive prior lienholder of interest in property without due process of law. Although the mechanic's lien in such case, under Florida mechanic's lien statute and also UCC § 9-310, had priority over the earlier, federally recorded security interest, the sale under the mechanic's lien statute did not give purchaser at such sale title to the plane free and clear of claim of holder of previously recorded security interest. First Nat'l Commerce & Fin. Co. v. Indiana Nat'l Bank, 360 So. 2d 791 (Fla. App. 1978).

Abandoned Motor Vehicle Act provision permitting automobile repairman to sell an abandoned vehicle to pay for the cost of repairs does not conflict with UCC provision pertaining to priority of lien; so that repairer of automobile could sell abandoned automobile and give buyer title free of perfected security interest. Bryce Hosp. Credit Union v. Warrior Dodge, Inc., 50 Ala. App. 15, 276 So. 2d 602 (Civ. App. 1973), cert. denied, 290 Ala. 362, 276 So. 2d 607 (1973).

Evidence was insufficient to support finding that secured party resold automobile in violation of notice requirement of UCC § 9-504(3) where sale was actually conducted by repairman having garageman's possessory repair lien on vehicle in question, which was superior to secured party's perfected security interest under UCC § 9-310, and where evidence failed to show that repairman sold vehicle in concert with or as agent for secured party. Magnavox Ft. Wayne Employees Credit Union v. Benson, 165 Ind. App. 155, 331 N.E.2d 46 (1975).

RESEARCH REFERENCES

ALR. Priority as between lien for repairs and the like, and right of seller under conditional sales contract. 36 A.L.R.2d 198.

Priority as between artisan's lien and chattel mortgage. 36 A.L.R.2d 229.

Lien for storage of automobile. 48 A.L.R.2d 894.

Priority as between mechanic's lien and purchase-money mortgage. 73 A.L.R.2d 1407.

Secured transactions: priorities as between previously perfected security interest and repairman's lien on motor vehicle under Uniform Commercial Code. 69 A.L.R.3d 1162.

Construction and effect of UCC § 9-311 giving debtor right to transfer his interest in collateral. 45 A.L.R.4th 411.

Am Jur. 51 Am. Jur. 2d, Liens §§ 60-70, 75.

68A Am. Jur. 2d, Secured Transactions § 603 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:381-9:383 (liens for services or materials).

CJS. 79 C.J.S., Secured Transactions § 100 et seq.

53 C.J.S., Liens § 27.

§ 75-9-334. Priority of security interests in fixtures and crops.

(a) A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty (20) days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) The security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) Perfected pursuant to a statute described in Section 75-9-311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

SOURCES: Derived from former 1972 Code § 75-9-313 [Codes, 1942, § 41A:9-313; Laws, 1966, ch. 316, § 9-313; Laws, 1968, ch. 488, § 1; Laws, 1977, ch. 452, § 22; Laws, 1992, ch. 303, § 1, eff from and after July 1, 1992] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for furture use.]

II. Under Former § 75-9-313.

6. In general.
7. "Fixtures."
8. What constitutes security interest in fixtures.
9. Priority as to realty encumbrances; prior.
10. —Subject.
11. —Effect of consent.
12. Priority as to conflicting interests in fixtures.
13. Priority as to lien creditors.
14. Removal of collateral.

I. Under Current Law.

1.-5. [Reserved for furture use.]

II. Under Former § 75-9-313.

6. In general.

Real estate mortgages are not to be viewed as security agreements within the meaning of the Code just because they happened to contain provisions relating to attached personalty. In re Royer's Bakery, Inc., 58 Lanc. L. Rev. 405 (Pa 1963).

UCC § 9-313(2) is not an unconstitutional impairment of the obligation of contract because it gives a prior lien status to after-installed property as against pre-existing mortgages, because a conditional seller could obtain priority over a mortgagee at the time the mortgage was created by filing in accordance with the amended provisions of the Uniform Conditional Sales Act. In re Royer's Bakery, Inc., 58 Lanc. L. Rev. 405 (Pa. 1963).

Rules regulating right of third persons in goods sold under security agreements when affixed or related to realty are set forth in this section. Royal Store Fixture Co. v. Patten, 183 Pa. Super. 249, 130 A.2d 271 (1957).

7. "Fixtures."

A radio transmission tower leased to a corporation and erected upon real property leased to the corporation by a third party did not become a fixture to the property after default by the corporation on its leases where the intention of the tower's lessor and the corporation had been that the tower was to remain the property of the lessor and where, although the tower was 400 feet high, it could be removed merely by detaching the bolts and guy wires which attached it to a concrete slab on the property. Motorola Communications & Elecs., Inc. v. Dale, 665 F.2d 771 (5th Cir. 1982).

New Hampshire UCC § 9-313(1) defers to state law for definition of fixtures. WO Co. v. Benjamin Franklin Corp., 562 F.2d 1339 (1st Cir. N.H. 1977).

Under Arkansas law, a trade fixture is not a "fixture" but is "equipment." In re Factory Homes Corp., 333 F. Supp. 126 (W.D. Ark. 1971).

The local law, apart from the Code, determines whether property constitutes a fixture. In re Royer's Bakery, Inc., 58 Lanc. L. Rev. 405 (Pa. 1963).

8. What constitutes security interest in fixtures.

The clause of a real estate mortgage which extends the coverage of the mortgage to things used in the operation of the business on the mortgaged premises gives the mortgagee security but it is not a security interest within the Code because it relates to a real estate mortgage which is expressly excluded from the Code and is not to be brought within the Code merely because it happens to contain provisions relating to attached personal property. In re Royer's Bakery, Inc., 58 Lanc. L. Rev. 405 (Pa 1963).

9. Priority as to realty encumbrances; prior.

UCC § 9-313(2) gives security interests in goods which later become fixtures priority over prior interests in the real estate, except to the extent (see UCC § 9-313(4)(c)) that a creditor with an interest in the realty makes subsequent advances. Carefree Homes, Inc. v. Production Credit Ass'n, 81 Wis. 2d 541, 260 N.W.2d 759 (1978).

Under UCC § 9-313, seller of custom-made kitchen appliances was entitled to repossession upon default, but after failing to repossess he was not entitled to maintain action for purchase price against subsequent purchaser of property. Nu-Way Distrib. Corp. v. Schoikert, 44 A.D.2d 840 (2d Dep't 1974).

Seller of internal equipment to be used at saw mill had security interest in equipment which attached before equipment became fixtures attached to saw mill, notwithstanding fact that sales contract was signed four days after equipment had been delivered and installed; thus, under Code § 9-313 seller had priority over saw mill mortgagee. GECC v. Pennsylvania Bank & Trust Co., 56 Pa. D. & C.2d 479 (1972).

Fixture security interest has priority over antecedent interest in real estate. Honea v. Laco Auto Leasing, Inc., 80 N.M. 300, 454 P.2d 782 (Ct. App. 1969).

Where a security interest has been perfected in plumbing fixtures prior to their attachment to realty the secured party prevails over the holder of a prior mortgage of the real estate although such mortgage contains an after-acquired property clause. Denis v. Shirl-Re Realty Corp., 4 U.C.C. Rep. Serv. 609 (1967, NY Sup).

Under the provisions of the Uniform Commercial Code the title of a conditional vendor to removable fixtures installed upon realty is superior to the lien of a prior mortgage containing the standard after-acquired property clause. Blancob Constr. Corp. v. 246 Beaumont Equity, Inc., 23 A.D.2d 413 (1st Dep't 1965).

Under Arkansas law the lien of a deed of trust executed and recorded prior to the effective date of the UCC takes priority over the lien of the security interest of a seller of fixtures under a transaction entered into after the Code became effective, and made in strict accordance with the Code's provisions, for the seller of the fixtures was charged with notice of the existence of the deed of trust. Wilson v. Prudential Ins. Co. of Am., 239 Ark. 1071, 396 S.W.2d 300 (1965).

Carpeting furnished to a non-profit corporation was capable of being construed as a fixture, and an unrecorded "conditional sales contract note" covering the carpeting was insufficient to create a security interest which would take priority over an encumbrance created by a prior deed of trust containing an after-acquired property provision. United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

10. —Subject.

Where financing statement covering steel grain drying bin, which became fixture, was filed in office of county clerk but was not filed in office of registrar of deeds, UCC § 9-401 rendered filing ineffective against bank that subsequently took mortgage on property; under UCC § 9-313, security interest of seller of grain bin, not being properly filed, was not protected, bank's mortgage lien had priority, and purchasers at foreclosure sale acquired all property subject to mortgage, including bin. Tillotson v. Stephens, 195 Neb. 104, 237 N.W.2d 108 (1975), overruled on other grounds, First Nat'l Bank v. Rose, 213 Neb. 611, 330 N.W.2d 894 (1983).

Applying the New Jersey rule, the court held that a machine used in the manufacture of corrugated boxes, neither attached to the building in which it was located, nor intended to be so attached, was not a fixture, and the holder of the interest could not prevail in a reclamation proceeding against the purchaser's trustee in bankruptcy when the security interest had not been recorded in the office of the Secretary of State. In re Park Corrugated Box Corp., 249 F. Supp. 56 (D.N.J. 1966).

11. —Effect of consent.

Requirement of Florida version of UCC § 9-313 with respect to security interests in fixtures that person seeking to establish security interest obtain written consent or disclaimer from owner of realty (debtor's landlord), was not satisfied by provision in lease generally consenting to improvement, remodeling, and removal of fixtures on termination. In re Seminole Park & Fairgrounds, 502 F.2d 1015 (5th Cir. Fla. 1974).

12. Priority as to conflicting interests in fixtures.

Hydraulic lifts installed at gas station prior to lease were fixtures within UCC § 9-313 and alleged lessor which had not filed lease could not prevail as to the lifts over execution levy of trustee in bankruptcy who had no notice of lessor's claimed interest or over purchaser of gas station at bankruptcy sale. Leawood Nat'l Bank v. City Nat'l Bank & Trust Co., 474 S.W.2d 641 (Mo. Ct. App. 1971).

A bank's first mortgage had priority over a security interest arising from the construction of a swimming pool below the surface of the ground covered by the bank's first mortgage, where such pool had become a fixture prior to the advancement of money by the bank claiming the security interest. State Bank v. Kahn, 58 Misc. 2d 655 (1969).

The holder of a chattel mortgage covering after-acquired property who established his security interest by properly filing financing statements takes priority over holder of previously executed conditional sales contract covering the same personal property and fixtures. Cain v. Country Club Delicatessen of Saybrook, Inc., 25 Conn. Supp. 327, 203 A.2d 441 (1964).

13. Priority as to lien creditors.

In action by supplier of air conditioning equipment for diner, to foreclose mechanic's lien and to collect on check issued for cost of air conditioning equipment on which payment had been stopped, diner was real property within meaning of state lien law, notwithstanding that owner of diner and manufacturer-seller of diner had entered into security agreement, pursuant to UCC § 9-313, that diner would remain personal property for financing purposes. Fedders Cent. Air Conditioning

Corp. v. Karpinecz & Sons, 83 Misc. 2d 720 (1975).

Historical society's unperfected security interest in station used by debtor railroad was not enforceable against creditor with perfected security interest arising out of recorded mortgage, nor against debtor's trustee in bankruptcy who had status of lien creditor. In re New Hope & I.R.R., 353 F. Supp. 608 (E.D. Pa. 1973).

14. Removal of collateral.

What Code provision relating to security interest in fixtures is aiming at is prevention of substantial destruction of building, such as would be case for instance, if new exterior surface had been installed in place of old one; provision may not prevent removal of aluminum siding which has been added to house, provided house will remain substantially in original state after removal. Dry Dock Sav. Bank v. De Georgio, 61 Misc. 2d 224 (1969) (court recognized that this may turn out to be somewhat Pyrrhic victory, giving lienor pile of dubious scrap not worth labor of getting it off house, repairing nail holes, etc. Whether removal of aluminum siding hurts mortgagee without doing lienor any corresponding good was held to be something for parties to consider and beyond control of court).

Where personal property cannot be removed without causing substantial damage to the freehold the after-acquired property clause of the prior mortgage is superior to the purchase money security interest of the seller of such personal property. Feldzamen v. Paulro Properties, Inc., 4 U.C.C. Rep. Serv. 524 (1967, NY Sup).

RESEARCH REFERENCES

ALR. Sprinkler system as fixture. 19 A.L.R.2d 1300.

Amusement apparatus or device as fixture. 41 A.L.R.2d 664.

Air conditioning plant, equipment, apparatus, or the like as fixture. 43 A.L.R.2d 1378.

Electric range as fixture as between mortgagor and mortgagee or successor in interest. 57 A.L.R.2d 1103.

Equitable estoppel of secured party's right to assert prior, perfected security interest against other secured creditor or subsequent purchaser under Article 9 of Uniform Commercial Code. 9 A.L.R.5th 708.

Am Jur. 35A Am. Jur. 2d, Fixtures § 33 et seq.

68A Am. Jur. 2d, Secured Transactions § 788 et seq. (priority of security interest in fixtures).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:126 (instruction to jury; "goods" defined).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:411-9:416 (priorities of security interests in fixtures).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2049 through 253:2054 (priority of security interests in fixtures).

CJS. 36A C.J.S., Fixtures § 54.

Law Reviews. Williamson and Redfern, Lender liability in Mississippi: Part II loan commitments and agreements. 59 Miss. L. J. 71, Spring, 1989.

§ 75-9-335. Accessions.

(a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 75-9-311(b).

(e) After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

SOURCES: Derived from former 1972 Code § 75-9-314 [Codes, 1942, § 41A:9-314; Laws, 1966, ch. 316, § 9-314, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-314.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-314.

6. In general.

In a lawsuit arising from a finance company's alleged unlawful conversion of personal property located inside a truck that it repossessed, tires which the purchaser had mounted on the truck became fixtures of the collateral and therefore the amount expended on them was not recoverable as damages. PACCAR Fin. Corp. v. Howard, 615 So. 2d 583 (Miss. 1993).

Under UCC § 9-314(1), "accessions" are goods which are "installed in or affixed to other goods." Murphy v. Beneficial Fin. Co., 443 F. Supp. 463 (S.D. Ohio 1976).

Where truck repairer failed to take security interest in rebuilt engine which repairer installed in truck that was subject to prior security interest, repairer was not entitled to protection afforded by UCC § 9-314(1) and was not entitled to remove engine from truck on nonpayment of repair bill. Ford Motor Credit Co. v. Howell Bros. Truck & Auto Repair, 57 Ala. App. 46, 325 So. 2d 562 (Ala. Civ. App. 1975).

In replevin action for recovery of automotive property in which plaintiff claimed to have a security interest perfected by filing, sale of automotive property occurred after date of filing and not before filing as required by UCC § 9-314, lien of plaintiff perfected before sale had priority over title of buyer acquired by sale. Mills-Morris Automotive v. Baskin, 224 Tenn. 697, 462 S.W.2d 486 (1971).

Where creditor held perfected lien before debtors were adjudicated bankrupt, trustee's lien is subordinate to that of creditor. In re Rivet, 299 F. Supp. 374 (E.D. Mich. 1969).

RESEARCH REFERENCES

ALR. Sprinkler system as fixture. 19 A.L.R.2d 1300.

Accession to motor vehicle. 43 A.L.R.2d 813.

Air-conditioning plant, equipment, apparatus, or the like as fixture. 43 A.L.R.2d 1378.

Appliances, accessories, pipes, or other articles connected with plumbing as fixtures. 52 A.L.R.2d 222.

Am Jur. 1 Am. Jur. 2d, Accession and Confusion §§ 1, 3.

68A Am. Jur. 2d, Secured Transactions §§ 800 through 804 (priority pertaining to accession).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:431-9:433 (priorities of security interests in accessions).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2055 through 253:2057 (accessions).

CJS. 1 C.J.S., Accession §§ 3-12.

79 C.J.S., Secured Transactions § 22 et seq.

72 C.J.S., Pledges § 30.

§ 75-9-336. Commingled goods.

(a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one (1) security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one (1) security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

SOURCES: Derived from former 1972 Code § 75-9-315 [Codes, 1942, § 41A:9-315; Laws, 1966, ch. 316, § 9-315, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-315.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-315.

6. In general.

Cattle which ate feed in which party had perfected security interest were not "product" or "mass" as such terms are used in UCC § 9-315(1)(a), so as to preserve such security interest, since feed was not "manufactured, processed, assembled, or commingled" with cattle within meaning of UCC § 9-315(1)(a), but simply became nonexistent after it was eaten. Also, such security interest was not sustainable under UCC § 9-315(1)(b), since party's financing statement did not specifically cover "product" (cattle) into which feed had allegedly been "manufactured, processed, or assembled." First Nat'l Bank v. Bostron, 39 Colo. App. 107, 564 P.2d 964 (1977).

Perfected security interest in cattle feed did not, in and by itself, extend under UCC § 9-315(1) and UCC § 9-307(1) to cattle which ate such feed since feed, after being eaten, not only lost its identity under UCC § 9-315(1), but also ceased to exist within meaning of UCC § 9-315(1) and UCC § 9-307(1). Moreover, cattle which ate feed did not constitute "proceeds" thereof within meaning of UCC § 9-306(1) and (2). First Nat'l Bank v. Bostron, 39 Colo. App. 107, 564 P.2d 964 (1977).

In prosecution for crime of moving and transferring inventory with intent to hinder enforcement of security interests, defendant's transfer of one business to location of his other business and his commingling of inventories of his two businesses constituted legal behavior in absence of contrary stipulation in security instrument, since, inter alia, under UCC § 9-205, security interest was not invalidated or made fraudulent against creditors by commingling of inventories and UCC § 9-315 protected any security interest in commingled inventory. Sowards v. State, 137 Ga. App. 423, 224 S.E.2d 85 (1976).

RESEARCH REFERENCES

ALR. Confusion of goods by accident, mistake, or act of a third person. 39 A.L.R.2d 555.

Am Jur. 1 Am. Jur. 2d, Accession and Confusion § 10 et seq.

69 Am. Jur. 2d, Secured Transactions §§ 805 through 807 (priority pertaining to commingled goods).

78 Am. Jur. 2d, Warehouses § 111 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:441, 9:442 (priorities of security interests; commingled or processed goods).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3561 et seq. (priority when goods are commingled or processed).

CJS. 79 C.J.S., Secured Transactions § 122.

15A C.J.S., Confusion of Goods § 3 et seq.

93 C.J.S., Warehousemen and Safe Depositaries §§ 21- 23.

§ 75-9-337. Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 75-9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

SOURCES: Derived from former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6, eff from and after April 1, 1978; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56, eff from and after July 1, 1996] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103(2)(d).

6. Movement of property covered by certificate of title.
7. —Title to nontitle state.
8. —Nontitle to title state.
9. —Between title states.
10. —Between nontitle states.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-103(2)(d).

6. Movement of property covered by certificate of title.

Where bankrupt, using money borrowed from New York bank, purchased second hand truck in Ohio and acquired clean certificate of title in Ohio, bank's security interest not being noted on title certificate as required by Ohio law, bankrupt registered vehicle in Ohio using title certificate, although bank knew nothing of Ohio registration and title certificate nor of bankrupt's intention to register vehicle there, and although truck was garaged principally in New York, in accordance with UCC § 9-103(4) law of Ohio determined existence of perfected security interest prior to bank's lawful repossession of truck in state of New York and bank, therefore, did not obtain perfected security interest in New York by filing financing statement in New York. In re Osborn, 389 F. Supp. 1137 (N.D.N.Y. 1975) (applying New York law).

UCC § 9-103(4) unequivocally removes application of UCC § 9-103(3) to any personal property covered by a certificate of title issued under a statute of any state which requires indication on a certificate of title of any security interest as a condition of perfection; in other words, one who has a security interest in personal property, perfected in a state which requires the issuance of a certificate of title on such property and the listing thereon of a security interest as a condition of perfection, does not have to protect such security interest by any further action in a state to which the property may thereafter be removed; this places an undue burden on prospective lienees in Alabama which does not have a registration and title statute; it appears the undue hardship to lenders in Alabama resulting from the effect of UCC § 9-103(4) was created by the legislature and must be removed by it, either by repeal, amendment, or passage of other correctional legislation. Deposit Nat'l Bank v. Chrysler Credit Corp., 48 Ala. App. 161, 263 So. 2d 139 (Civ. App. 1972).

UCC § 9-103(4) relating to perfection of security interests in other states is not repealed by motor vehicle code provision regarding certificate of title to auto, and controls where auto was purchased in Illinois and registered in Ohio, where mortgagee's security interest was noted on Ohio certificate of title, and where owner's judgment creditor knew of foreign registration and that there was some lien, so that mortgagee's security interest under UCC § 9-103(4) was superior to that of creditor. Town House Motel, Inc. v. Ward, 2 Ill. App. 3d 699, 276 N.E.2d 809 (5th Dist. 1971).

Under Virginia UCC, perfection of security interest would be governed by law of jurisdiction which issued certificate of title on mobile home, which in this case was West Virginia. In re Smith, 311 F. Supp. 900 (W.D. Va. 1970), aff'd, 437 F.2d 898 (4th Cir. Va. 1971).

Once a security interest (lien) is noted upon a certificate of title in a state which requires such notation for perfection, security interest (lien) remains perfected when vehicle is removed to another state, even if debtor has not obtained new certificate of title in other state. Streule v. Gulf Fin. Corp., 265 A.2d 298 (D.C. 1970).

Where a house trailer was purchased in Virginia and the certificate of title issued by that state showed a bank's conditional sales contract as a lien thereon, it was unnecessary for the security holder to perfect its lien in New York within four months after the trailer was moved there, for subsection (4), rather than subsection (3) was controlling. In re White, 266 F. Supp. 863 (N.D.N.Y. 1967).

7. —Title to nontitle state.

Where bank had perfected security interest in automobile in Oklahoma, driver of car fraudulently obtained Oklahoma certificate of title which indicated there were no liens on vehicle, drove car to Nevada and sold it to defendant on May 15, 1971, trial court erred in dismissing bank's complaint for conversion of car on grounds that bank failed to prove car had been brought into Nevada within four-month period immediately preceding date when driver sold car to defendant, as prescribed by UCC § 9-103(3); evidence showed that driver took possession of automobile in Oklahoma in December, 1970, that he made two payments on vehicle which were mailed from Oklahoma, and that he obtained Oklahoma certificate of title in March, 1971, from which it could be inferred that automobile was in Oklahoma as late as March, 1971, within four months of time when defendant purchased it. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

Where Texas bank perfected security interest in automobile located in Texas, a title state, and gave owner permission to take car to New York, a nontitle state, and license it there, with understanding that it would not have to relinquish its Texas title, and where owner, after driving car to New York and obtaining clear New York title certificate, drove car to Washington, a title state, obtained clear Washington title and within four months after leaving Texas sold car to Washington purchaser, Texas law governed initial perfection of security interest and, regardless of whether Texas bank perfected its security interest in compliance with Washington law, its security interest continued under UCC § 9-103(3) to be perfected in Washington for first four months after car was brought into state and, thus, upon owner's default, Texas bank could lawfully repossess car from Washington buyer. Morris v. Seattle-First Nat'l Bank, 10 Wash. App. 129, 516 P.2d 1055 (1973).

8. —Nontitle to title state.

New Jersey UCC § 9-103(4) should only be applied to goods which, at the time of entry into New Jersey, are covered by a certificate of title. New Jersey UCC § 9-103(3) should apply to all goods which are moved into New Jersey from noncertificate-of-title jurisdictions. If a certificate of title is subsequently acquired, New Jersey UCC § 9-103(3) remains applicable according to its terms. And with respect to professional buyers of goods, the four-month grace period provided in New Jersey UCC § 9-103(3) is absolute, and bona-fide status is no protection. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978).

In action to foreclose chattel mortgage on mobile home that was assigned to plaintiff by party that financed purchase of such home in British Columbia, Canada, where (1) plaintiff's security interest in such home was perfected by filing under British Columbia law, which did not issue certificates of title to mobile homes; (2) purchasers breached chattel mortgage's provisions by taking home from British Columbia into state of Washington without consent of plaintiff chattel-mortgage holder and secured Washington certificate of title to such home by falsely representing that they owned it free of any lien or security interest therein; and (3) purchasers on basis of such certificate of title obtained loan from Washington lender and lender perfected security interest in home in accordance with Washington law, court would hold under UCC § 9-103(3) and (4), and also Washington statute dealing with perfection and loss of security interest where vehicle subject to interest had certificate of title, that as between the two holders of a perfected security interest in such home, holder of interest perfected in British Columbia had priority, since UCC § 9-103(4) does not apply to all security interests, but only to those that attached after certificate of title to vehicle was issued. Associates Realty Credit, Ltd. v. Brune, 89 Wash. 2d 6, 568 P.2d 787 (1977) (citing annotation; also holding that the holder of security interest perfected in British Columbia must first exhaust its Canadian security before resorting to proceeds of sale, in state of Washington, of mobile home in suit).

Where security interest of secured party with respect to automobile was duly perfected in Arizona and Texas prior to time debtor brought automobile to Oklahoma and where Oklahoma certificate of title was prepared but not issued in Oklahoma, under UCC § 9-103(4), accomplished perfection in Arizona or Texas would continue in Oklahoma and security interest of secured party was superior to claim of subsequent creditor in Oklahoma. McMillin v. Phoenix Telco Fed. Credit Union, 429 F. Supp. 131 (W.D. Okla. 1976) (applying Oklahoma law).

Under UCC § 9-103, holder of security interest in automobile, perfected pursuant to laws of Minnesota, a nontitle state, who had no knowledge of its removal to Nebraska, a title state, had priority over Nebraska purchaser without knowledge of such security interest who purchased automobile with clear Nebraska title within 4 months of its arrival in Nebraska; UCC § 9-103, Official Comment 7, makes it clear that subsection (4) does not apply to automobile which was sold under conditional sales contract in state which does not require indication on certificate of title of any security interest in property as condition of perfection, and which was subsequently brought into state which had such requirement; thus, in present case, pursuant to UCC § 9-103(3), question of whether plaintiff had perfected security interest in automobile when it was brought to Nebraska was governed by Minnesota law. Community Credit Co. v. Gillham, 191 Neb. 198, 214 N.W.2d 384 (1974), overruled on other grounds, Novak v. Nelsen, 209 Neb. 728, 311 N.W.2d 8 (1981).

Subsection (4) does not apply to an automobile which was sold under a conditional sales contract in a state that does not require indication on a certificate of title of any security interest as a condition of perfection, although the automobile was subsequently brought into a state which had such a requirement. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

Under subsection (3) of this section the New York assignee of a conditional sales contract who has filed the contract in accordance with the then existing Uniform Commercial Code had made its reservation of title valid against all persons under New York Law as that state did not require a notation of the seller's interest to appear on the title certificate, and at time the car buyer purported to sell it in Pennsylvania, the assignee held a perfected security interest in the car in that state. Al Maroone Ford, Inc. v. Manheim Auto Auction, Inc., 205 Pa. Super. 154, 208 A.2d 290 (1965).

9. —Between title states.

Where (1) buyer purchased 1974 pickup truck on July 12, 1974, (2) secured party perfected security interest therein under New York law by obtaining certificate of title on which secured party's lien was noted, (3) buyer moved from New York to Oklahoma on June 13, 1975, and applied for and received Oklahoma certificate of title for such truck without surrendering New York certificate of title, which was still in secured party's possession in New York, (4) buyer was adjudicated bankrupt on October 18, 1976, and (5) secured party, as of date of buyer's adjudication of bankruptcy, had not filed any financing statement in Oklahoma reflecting its security interest in truck, court held that bankruptcy judge did not err in holding that notation of secured party's lien on New York certificate of title, which remained outstanding and unsurrendered on buyer's relocation to Oklahoma, was not sufficient to maintain secured party's perfected security interest in truck under UCC § 9-103(4). In such case, UCC § 9-103(3)-providing that previously perfected security interest in property subsequently brought into a second state continues perfected in second state for four months, after which it must be reperfected in second state-applies, and since secured party had never filed financing statement concerning truck in Oklahoma, it had no perfected security interest in truck as of date on which debtor was adjudicated bankrupt. In re Foster, 445 F. Supp. 949 (N.D. Okla. 1978) (applying Oklahoma law).

Where (1) Canadian creditor, which was assignee of buyer's automobile-purchase contract with Canadian dealer, perfected its lien on vehicle under Canadian law, (2) buyer acquired Canadian certificate of registration which did not require notation thereon of creditor's security interest, (3) buyer drove car to New Jersey, where he changed Canadian registration to New Jersey registration and fraudulently obtained "clean" New Jersey certificate of title which showed no liens on vehicle, (4) buyer within four days after purchasing vehicle sold it to New Jersey used-car dealer, which in turn sold it to one of its customers, and (5) Canadian creditor sued New Jersey dealer for conversion, court would hold, on reinstating trial court's granting of summary judgment for plaintiff, (1) that New Jersey UCC § 9-103(3) and (4) should be interpreted to protect interest of foreign lienholder, (2) that priority of plaintiff's perfected security interest under Canadian law was not defeated by original buyer's fraudulent securing of "clean" New Jersey certificate of title, and (3) that defendant dealer and professional buyer, which in good faith purchased vehicle with "clean" certificate of title, was not entitled to prevail over plaintiff which held valid but undisclosed foreign lien. IAC, Ltd. v. Princeton Porsche-Audi, 75 N.J. 379, 382 A.2d 1125 (1978) (noting that New Jersey had not adopted 1972 amendment of UCC § 9-103).

Auto subject to security interest perfected under Oklahoma law was brought into Texas without knowledge or consent of owners or holder of security interest; Texas certificate of title was issued to plaintiff dealer's predecessor in interest; held, dealer took subject to outstanding security interest. Phil Phillips Ford, Inc. v. St. Paul Fire & Marine Ins. Co., 454 S.W.2d 465 (Tex. Civ. App. 1970), aff'd, 465 S.W.2d 933, 42 A.L.R.3d 1158 (Tex. 1971) (superseded by statute as stated in Rutherford v Whataburger, Inc. (CA 5th Dist) 601 SW2d 441).

Truck was not sold in ordinary course of business; buyer had no knowledge of Florida source of origin of truck; buyer inquired of seller and checked proper county offices in New York and found that no liens had been filed against truck; Florida bank held chattel mortgage on truck; bank had permitted seller, who had acquired title in Florida, to register title in New York; both New York and Florida are title states; seller had failed to use proceeds of sale to pay off lien; held, lien of bank was subordinated to buyer's purchase interest. Seely v. First Bank & Trust, 64 Misc. 2d 845 (1970).

10. —Between nontitle states.

Where finance company had perfected security interest in automobile in Oklahoma, a non-title state, car was registered in Alabama, also a non-title state, and then certificate of title was issued in Georgia, a certificate of title state, which showed no security interest, and vehicle was subsequently sold to purchaser in Alabama within four months after vehicle was removed from Oklahoma, finance company's security interest was in full force and effect in Alabama when purchaser bought car and, hence, finance company's claim was superior to that of purchaser. GMAC v. Long-Lewis Hdwe. Co., 54 Ala. App. 188, 306 So. 2d 277 (Civ. App. 1974), cert. denied, 293 Ala. 752, 306 So. 2d 282 (1974).

§ 75-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 75-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 69, eff from and after July 1, 2006.

§ 75-9-339. Priority subject to subordination.

This article does not preclude subordination by agreement by a person entitled to priority.

SOURCES: Derived from former 1972 Code § 75-9-316 [Codes, 1942, § 41A:9-316; Laws, 1966, ch. 316, § 9-316, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Variation of provisions of this Code by agreement, see § 75-1-302.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-316.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-316.

6. In general.

A vendor, by making an unconditional assignment of his note and deed of trust to a bank, and by filing that assignment in the Chancery Clerk's office conjunctive with an erroneous pay-off figure given by the bank to the closing attorney for a second bank which lent purchasers money secured by the real estate, required that the vendor's deed of trust be subordinated to the second bank's deed of trust. Cain v. Robinson, 523 So. 2d 29 (Miss. 1988).

No agreement existed, as matter of law, to subordinate perfected security interest to unperfected security interest pursuant to UCC § 9-316 where (1) evidence did not show that parties had ever agreed, in writing or orally, to enter into such an agreement, and (2) creditor alleging existence of subordination agreement did not change its position in reliance thereon. A-W-D, Inc. v. Salkeld, 175 Ind. App. 443, 372 N.E.2d 486 (1978).

Supplier of goods on open account, which held perfected security interest in debtor's inventory and accounts, was entitled under UCC § 9-312(1) to prevail in action against second supplier of goods to same debtor for value of goods removed by second supplier from debtor's inventory, where (1) second supplier's security interest in debtor's goods was not perfected, and (2) evidence did not sustain second supplier's contention that first supplier had, under UCC § 9-316, orally subordinated its perfected security interest to second supplier's unperfected security interest. A-W-D, Inc. v. Salkeld, 175 Ind. App. 443, 372 N.E.2d 486 (1978).

When mortgagee of real estate agreed that title to saw mill equipment to be installed on premises should remain in seller of equipment until all amounts due under contract for sale of equipment had been paid, this obligation bound mortgagee under any subsequent refinanced or new mortgages with mortgagor covering substantially same real estate and fixtures, in accordance with Code § 9-316. GECC v. Pennsylvania Bank & Trust Co., 56 Pa. D. & C.2d 479 (1972).

The legal priority of security interests perfected by chronological order of filing may be subordinated by agreement between creditors under UCC § 9-316, and such subordination agreements need not be cast in any particular form and may be verbal. Williams v. First Nat'l Bank & Trust Co., 482 P.2d 595 (Okla. 1971).

RESEARCH REFERENCES

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 806 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:451, 9:452 (priorities of security interests; subordination by agreement).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2066, 253:2071, 253:2073 (priority subject to subordination).

SUBPART 4.

RIGHTS OF BANK.

Sec.
75-9-340. Effectiveness of right of recoupment or set-off against deposit account.
75-9-341. Bank's rights and duties with respect to deposit account.
75-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

§ 75-9-340. Effectiveness of right of recoupment or set-off against deposit account.

(a) Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in subsection (c), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Section 75-9-104(a)(3), if the set-off is based on a claim against the debtor.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — General effectiveness of security agreement, see § 75-9-201.

§ 75-9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in Section 75-9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — General effectiveness of security agreement, see § 75-9-201.

§ 75-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This article does not require a bank to enter into an agreement of the kind described in Section 75-9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

SOURCES: Derived from 1972 Code § 75-8-106 [Laws, 1996, ch. 468, § 7] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — General effectiveness of security agreement, see § 75-9-201.

PART 4.

RIGHTS OF THIRD PARTIES.

SEC.	
75-9-401.	Alienability of debtor's rights.
75-9-402.	Secured party not obligated on contract of debtor or in tort.
75-9-403.	Agreement not to assert defenses against assignee.
75-9-404.	Rights acquired by assignee; claims and defenses against assignee.
75-9-405.	Modification of assigned contract.
75-9-406.	Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.
75-9-407.	Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.
75-9-408.	Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

75-9-409. Restrictions on assignment of letter-of-credit rights ineffective.

Editor's Note — Many of the notes found under this part originated with the prior version of Chapter 9 which was revised in 2001. They have been moved to their current location at the direction of Codification Counsel. Some of the sections of the Uniform Commercial Code referenced in case notes under "Judicial Decisions" were current when the cases were decided but may have been revised or repealed since then. Cases decided under former law are clearly identified.

§ 75-9-401. Alienability of debtor's rights.

(a) Except as otherwise provided in subsection (b) and Sections 75-9-406, 75-9-407, 75-9-408, and 75-9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

SOURCES: Former 1972 Code § 75-9-401 [Codes, 1942, § 41A:9-401; Laws, 1966, ch. 316, § 9-401; Laws, 1968, ch. 489, § 1; Laws, 1977, ch. 452, § 24; Laws, 1982, ch. 439; Laws, 1984, ch. 454, § 1; Laws, 1995, ch. 329, § 1, eff from and after July 1, 1995] is now found in comparable provisions enacted at § 75-9-501 by Laws, 2001, ch. 495, § 1. Present § 75-9-401 was derived from former 1972 Code § 75-9-311 [Codes, 1942, § 41A:9-311; Laws, 1966, ch. 316, § 9-311, eff March 31, 1968] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Attachment in chancery, see § 11-31-1 et seq.
Attachment at law, see § 11-33-1 et seq.
Garnishment, see § 11-35-1 et seq.
Executions, see § 13-3-111 et seq.
Scope of Article, see § 75-9-109.
Conditions of enforceability, see § 75-9-203.
Right of the debtor to use collateral, see § 75-9-205.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-311.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-311.

6. In general.

Where (1) bank had perfected security interest in original debtor corporation's inventory, fixtures, and equipment, including after-acquired property, which was superior to lien later obtained by junior lienor under promissory note secured by same collateral, (2) original debtor corporation defaulted on notes given to bank (senior lienor) and to junior lienor, (3) junior lienor without informing bank took over assets of original debtor corporation, transferred them to newly formed corporation, began selling the original inventory which had become commingled with new inventory, and, with respect to original debtor corporation's assets, filed foreclosure complaint against bank and former owners of original debtor corporation alleging that he had taken possession of original debtor corporation's property, subject to bank's security interest, and was seeking to discharge obligation owed to bank in order to become owner of such property, and (4) bank filed complaint in replevin and took possession of collateral, trial court's judgment in favor of bank-which held that bank's security interest was at all times paramount to junior lienor's lien, that after-acquired property clause in bank's security agreement with original debtor corporation covered items that junior lienor had added in his operation of business under new corporation, and that bank should sell collateral, satisfy its own security interest from sale proceeds, and give remaining proceeds to junior lienor-was affirmed because (1) bank's after-acquired property clause effectively covered inventory and proceeds of both original debtor corporation and new corporation, (2) bank's security interest continued in collateral, including after-acquired property, under UCC § 9-306(2) and § 9-311, which must be read together, and (3) since junior lienor, on default of original debtor corporation, did not proceed in accordance with UCC § 9-505(2) in attempting to retain collateral, disposition of collateral ordered by trial court was proper. American Heritage Bank & Trust Co. v. O. & E., Inc., 40 Colo. App. 306, 576 P.2d 566 (1978).

Although UCC § 9-311 provides that debtor's rights in collateral may be voluntarily or involuntarily transferred, such provision must be read together with UCC § 9-306(2) which provides that security interest continues in collateral, notwithstanding sale, exchange, or other disposition thereof by debtor, unless debtor's action was authorized by secured party in security agreement or otherwise. American Heritage Bank & Trust Co. v. O. & E., Inc., 40 Colo. App. 306, 576 P.2d 566 (1978).

In marital property-division proceeding, trial court had authority under UCC § 9-311, providing that debtor's rights in collateral may be voluntarily or involuntarily transferred by judicial process, to direct husband to transfer title to bonds, which had been pledged as security for loan, to wife. However, any title that was involuntarily transferred by judicial order would be subject, under UCC § 9-306(2), to security interest created by the pledge, since wife, as party to suit in which such transfer was made, was not buyer in ordinary course of business under UCC §§ 1-201(9) and 9-307(1) who could take collateral (bonds) free of pledgee's security interest therein. Goetz v. Goetz, 567 S.W.2d 892 (Tex. Civ. App. 1978).

When the holder of promissory notes assigned his interest therein as collateral to secure payment of a prior indebtedness, a sum less than the aggregate amount of the notes, and indorsed and delivered them to that creditor, he did not irrevocably divest himself of the ultimate right to all of the proceeds of the notes, but retained ownership of those proceeds not required to satisfy that indebtedness, and, therefore, the negotiation of all of the notes operated only as a partial assignment of the proceeds of the notes; the interest retained by him was capable of being transferred and, when it was transferred by another collateral assignment, the transferee acquired a valid security interest as to his residuary interest in the notes, which security interest was perfected by a subsequent delivery of the notes to it. Lipkowitz & Plaut v. Affrunti, 95 Misc. 2d 849 (1978).

Under UCC § 9-311, transfer by debtor of property which is subject to a security interest is not wrongful in itself and does not result in an automatic default. Moreover, under UCC § 9-306(2), debtor's sale of the property does not destroy or affect continuing validity of creditor's security interest. Production Credit Ass'n v. Equity Coop Livestock Sales Ass'n, 82 Wis. 2d 5, 261 N.W.2d 127 (1978).

Contention by both pledgor and plegee that trial court's order, in supplementary proceedings held under Illinois Civil Practice Act, for sale of securities pledged as collateral for two demand notes violated UCC § 9-311 could not be sustained, since proceedings in question came within scope of phrase "other judicial process" in UCC § 9-311, dealing with voluntary and involuntary transfers of debtor's rights in collateral. North Bank v. F & H Resources, Inc., 53 Ill. App. 3d 950, 369 N.E.2d 174 (1st Dist. 1977).

Where New York debtor assigned accounts receivable to New York creditor under terms of security agreement and secured creditor complied with all steps required by UCC to perfect its security interest in such accounts, New York creditor's perfected security interest attached as soon as accounts came into existence and took priority over interest of Colorado creditor, as lien creditor under writ of attachment, with respect to accounts owed debtor by Colorado account debtors. Barocas v. Bohemia Import Co., 33 Colo. App. 263, 518 P.2d 850 (1974).

Provision in security agreement that any change in ownership would constitute default was not invalid under UCC § 9-311; thus, secured party was entitled to accelerate due date on promissory notes which were given in connection with sale of restaurant business, signed by individual purchasers as well as purchasing corporation, and secured by real estate mortgage on restaurant, security agreement covering personal property in restaurant, and pledge of stock in purchasing corporation, where individual purchasers caused stock in purchasing corporation to be transferred to third party and where large part of value of assets constituting security depended upon continuance of valid liquor license and successful carrying on of restaurant business on premises and unsuitable, irresponsible, or dishonest purchaser could lose license and/or destroy or "milk" business, leaving empty shell. Poydan, Inc. v. Agia Kiriaki, Inc., 130 N.J. Super. 141, 325 A.2d 838 (Ch. Div. 1974), aff'd, 139 N.J. Super. 365, 354 A.2d 99 (1976).

Under Delaware law prior creditor's security interest in chattels is extinguished by execution sale under Code § 9-311, although he enjoys priority position as to proceeds. Maryland Nat'l Bank v. Porter-Way Harvester Mfg. Co., 300 A.2d 8 (Del. 1972).

Even though seller of tractor had perfected its lien for unpaid purchase price by taking security agreement and filing financing statement in compliance with UCC, bank's action in causing encumbered tractor to be sold under attachment did not amount to conversion, since seller's right to enforce its lien against the tractor was in no way adversely affected by attachment sale. Citizens Bank v. Perrin & Sons, 253 Ark. 639, 488 S.W.2d 14 (1972).

A bank as the holder of a security interest in the inventory of a furniture retailer had no right of action in replevin against the sheriff who seized the goods under a levy of execution issued to satisfy the judgment of another of the retailer's creditors; for the security holder had no right of possession and was protected only by the fact that the execution sale was subject to its interest. First Nat'l Bank v. Sheriff of Milwaukee County, 34 Wis. 2d 535, 149 N.W.2d 548 (1967).

Where the debtor makes a prohibited assignment of the collateral he is bound by his act as against the transferee and cannot avoid the transfer on the ground that it was contrary to the security agreement. Miller v. Bonafied Ready Mix Corp., 4 U.C.C. Rep. Serv. 881 (1967, NY Sup).

Code § 9-311 does not exempt prior secured chattel from forced judicial sale by later judgment creditor. Altec Lansing v. Friedman Sound, Inc., 204 So. 2d 740 (Fla. App. 1967).

The existence of an outstanding security interest in collateral does not prevent an execution creditor of the debtor from causing an execution sale of the collateral, the sale being subject to any outstanding perfected security interest. Altec Lansing v. Friedman Sound, Inc., 204 So. 2d 740 (Fla. App. 1967).

This section does not give the conditional vendee of an automobile the right to sell it free of the interest of an assignee of the conditional vendor, but rather it sanctions sale or other creditor remedies against the debtor's equity in the vehicle. First Nat'l Bank v. Stamper, 93 N.J. Super. 150, 225 A.2d 162 (1966).

RESEARCH REFERENCES

ALR. Validity of anti-assignment clause in contract. 37 A.L.R.2d 1251.

Am Jur. 6 Am. Jur. 2d, Attachment and Garnishment §§ 109, 110, 113-117.

68A Am. Jur. 2d, Secured Transactions § 461 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:571-9:573 (alienability of debtor's rights; judicial process).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2043 through 253:2045 (alienability of debtor's rights: judicial process).

CJS. 7 C.J.S., Attachment §§ 84-86.

79 C.J.S., Secured Transactions §§ 106 through 139.

33 C.J.S., Executions §§ 28, 51-53.

38 C.J.S., Garnishment § 110 et seq.

72 C.J.S., Pledges §§ 37-39.

§ 75-9-402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

SOURCES: Former 1972 Code § 75-9-402 [Codes, 1942, § 41A:9-402; Laws, 1966, ch. 316, § 9-402; Laws, 1968, ch. 490, § 1; Laws, 1977, ch. 452, § 25, eff from and after April 1, 1978] is now found in comparable provisions enacted at §§ 75-9-502, 75-9-503, 75-9-504, 75-9-506, 75-9-507, 75-9-512, and 75-9-521 by Laws, 2001, ch. 495, § 1. Present § 75-9-402 was derived from former 1972 Code § 75-9-317 [Codes, 1942, § 41A:9-317; Laws, 1966, ch. 316, § 9-317, eff March 31, 1968] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Delegation of performance of duties under sales contract by assignment thereof, see § 75-2-210(4).

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-317.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-317.

6. In general.

In action by assignee for balance due on sales contract involving trade-in of defendant's combine for combine owned by seller and assignor of such contract (defunct implement dealer), where evidence showed that defendant traded in his combine to assignor; that contract was concurrently executed and assigned to plaintiff; that at time contract was entered into and assigned, both assignor and assignee made certain representations to defendant concerning combine that defendant received under contract; that in violation of such representations, assignor and assignee failed to perform required repair work on combine received by defendant, and that they ultimately took possession of such combine and thereby repudiated the sales contract; and that combine that defendant traded in was not returned to him, defendant could recover on counterclaim against plaintiff-assignee value of combine defendant had traded in, in addition to being absolved from making any payments on the contract, because (1) under UCC § 9-318(1), rights of assignee of contract rights are subject to all terms of contract between account debtor and assignor, and also to any defense or claim arising therefrom; (2) term "claim" includes setoffs and counterclaims; (3) in present case, plaintiff was more than mere assignee accepting right to payments under a contract, since plaintiff had participated in making the sale by orally affirming seller's promises to defendant and contract was concurrently executed and assigned to plaintiff; and (4) had plaintiff not taken assignment under such circumstances, UCC § 9-317 would have applied, and defendant's recourse would only have been against defunct assignor for indebtedness arising out of contract. Massey-Ferguson Credit Corp. v. Brown, 173 Mont. 253, 567 P.2d 440 (1977).

Assignment for security purposes of promissory note, secured by deed of trust on real property, was subject to provisions of Article 9, and did not result in delegation of duties to perform under promissory note and deed of trust offered as collateral since, by virtue of UCC §§ 2-210(4) and 9-317, a "financing assignment" assignee receives only rights or benefits inherent in collateral involved and does not assume liabilities. Black v. Sullivan, 48 Cal. App. 3d 557 (5th Dist. 1975).

Credit corporation, which was assignee of "lease" of crane containing provision that title to crane would pass to lessee upon completion of payment schedule, was assignee of security interest and, under UCC § 9-317, was not liable in contract or tort for acts or omissions of lessor or lessee. Brandes v. Pettibone Corp., 79 Misc. 2d 651 (1974).

RESEARCH REFERENCES

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 825.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:581 (liability for debtor's acts or omissions).

§ 75-9-403. Agreement not to assert defenses against assignee.

(a) In this section, "value" has the meaning provided in Section 75-3-303(a).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 75-3-305(a).

(c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Section 75-3-305(b).

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subsection (d), this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

SOURCES: Former 1972 Code § 75-9-403 [Codes, 1942, § 41A:9-403; Laws, 1966, ch. 316, § 9-403; Laws, 1977, ch. 452, § 26; Laws, 1978, ch. 401, § 8; Laws, 1979, ch. 369; Laws, 1985, ch. 381, § 1; Laws, 1987, ch. 373, eff from and after July 1, 1987] is now found in comparable provisions enacted at §§ 75-9-515, 75-9-516, 75-9-519, 75-9-522, and 75-9-525 by Laws, 2001, ch. 495, § 1. Present § 75-9-403 was derived from former 1972 Code § 75-9-206 [Codes, 1942, § 41A:9-206; Laws, 1966, ch. 316, § 9-206, eff March 31, 1968] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Security transactions excluded from provisions of code respecting sales of goods, see § 75-2-102.

Rights of holder in due course of negotiable instruments, see § 75-3-305.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-206.

6. In general; scope.
7. Waiver as against public policy.
8. —Not against public policy.
9. “Consumer goods.”
10. Defenses waived and not waived.
11. —Failure of consideration; nonperformance.
12. —Fraud in the inducement.
13 —Warranties.
14. Enforceability of waiver.
15. —Good faith.
16. —Notice.
17. —Relation of assignee to seller.
18. —Particular applications.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-206.

6. In general; scope.

Where status as “seller” outweighs status as “assignee”, party should not be accorded protection of assignee against defenses that derived from its actions as seller. Massey-Ferguson, Inc. v. Utley, 439 S.W.2d 57 (Ky. 1969).

A tractor buyer’s agreement set forth in a “time sale agreement” that he will not use any claim against the seller as a defense, setoff or counterclaim against an assignee is authorized under subsec. (1) of this section. Root v. John Deere Co. of Indianapolis, Inc., 413 S.W.2d 901 (Ky. 1967).

7. Waiver as against public policy.

A waiver by the buyer of his defenses is invalid as unconscionable and against public policy. Unico v. Owen, 50 N.J. 101, 232 A.2d 405 (1967).

A provision in a conditional sale agreement whereby the buyer agreed to waive, as against an assignee of the seller, any defenses which the buyer might have against the seller is void as against public policy. Quality Fin. Co. v. Hurley, 337 Mass. 150, 148 N.E.2d 385 (1958).

8. —Not against public policy.

Waiver of defense clause implied in retail instalment sales contract by virtue of Code § 9-206(1) would not nullify requirements of Illinois Consumer Fraud Act. HFC v. Mowdy, 13 Ill. App. 3d 822, 300 N.E.2d 863 (2d Dist. 1973).

Provision in instalment sales contract whereby purchaser of automobile waived, as against assignee of contract, defenses which could have been asserted against assignor-seller, as authorized by UCC § 9-206(1), was not contrary to public policy and, in absence of any showing of unconscionable conduct by parties, was enforceable against purchaser by bank that took assignment of contract in good faith. Holt v. First Nat'l Bank, 297 Minn. 457, 214 N.W.2d 698 (1973).

Buyer's covenant in a conditional sales contract that he will not assert any claim or defense against an assignee does not offend against public policy. GECC v. Tidenberg, 78 N.M. 59, 428 P.2d 33, 40 A.L.R.3d 1151 (1967).

9. "Consumer goods."

Bowling alley equipment is not "consumer goods" within the meaning of subd (1) of this section. Noblett v. GECC, 400 F.2d 442 (10th Cir. Okla. 1968), cert. denied, 393 U.S. 935, 89 S. Ct. 295, 21 L. Ed. 2d 271 (1968).

A tractor purchased by a construction company is not "consumer goods," as the term is used in this section. Beam v. John Deere Co., 240 Ark. 107, 398 S.W.2d 218 (1966).

10. Defenses waived and not waived.

Absent any allegations of bad faith on part of assignee of retail instalment contract for sale of tractor or of assignee's participation as principal in sale of tractor or in originating contract involved, court did not err in allowing demurrer to defense of rescission for material misrepresentation based upon allegation that seller's employee represented rate of interest on contract balance to be 7.5 percent per annum, while interest rate was in fact 14.4 percent per annum. John Deere Indus. Equip. Co. v. Delphia, 266 Or. 116, 511 P.2d 386 (1973).

Waiver of defense clause in contract constitutes complete defense to buyer's counterclaim for breach of contract, because assignee of conditional sales contract took assignment for value, in good faith, and without notice of claim or defense to debt; assignee was entitled to recover against buyer amount owing under assigned contract, independently of any claim to damages buyer may have had against seller for seller's alleged breach of contract. Jennings v. Universal C.I.T. Credit Corp., 442 S.W.2d 565 (1969).

11. —Failure of consideration; nonperformance.

In action by holder of note and chattel mortgage on tractor against purchaser of tractor as maker of note, UCC § 9-206 did not preclude purchaser-maker from raising defense of lack of consideration, notwithstanding there was agreement in mortgage not to set up defenses against assignee, where pleading and proof by purchaser-maker was that there never was delivery of stated consideration for note-the tractor-and evidence was clear and uncontradicted that assignee-holder's agent knew that fact when assignment was made; UCC § 9-206 does not preclude defense by maker of which assignee has notice. Associates Disct. Corp. v. Fitzwater, 518 S.W.2d 474 (Mo. Ct. App. 1974).

Assignee who does not take assignment "in good faith" is not entitled to protection of "cut-off" provisions of Code § 9-206, so that whatever claims and defenses consumer has with respect to instalment contracts may be asserted against assignee thereof; held, where seller had delivered only freezer and not frozen food called for by contract, assignee was not entitled to maintain action for payments due but could repossess freezer. Star Credit Corp. v. Molina, 59 Misc. 2d 290 (1969).

Seller breached service contract for TV set; notwithstanding waiver of defense clause in installment contract, assignee had no greater rights of recovery against buyers than seller-assignor would have had in absence of assignment; held, assignee was barred by seller's breach of service contract from recovery of balance due on contract. Fairfield Credit Corp. v. Donnelly, 158 Conn. 543, 264 A.2d 547, 39 A.L.R.3d 509 (1969).

Failure of consideration can be raised as a defense either against the assignee or assignor of a lease or sales contract, in the absence of a specific waiver of such defense on the part of the buyer or lessor.

Noblett v. GECC, 400 F.2d 442 (10th Cir. Okla. 1968), cert. denied, 393 U.S. 935, 89 S. Ct. 295, 21 L. Ed. 2d 271 (1968).

The provision in a lease of bowling alley equipment to the effect that an assignee of the lessor shall not be responsible for any of the lessor's obligations thereunder will not estop the lessee from asserting against the assignee any and all defenses for nonperformance which are available to him against the lessor. Noblett v. GECC, 400 F.2d 442 (10th Cir. Okla. 1968), cert. denied, 393 U.S. 935, 89 S. Ct. 295, 21 L. Ed. 2d 271 (1968).

A buyer may in the execution of a retail instalment contract waive, as against an assignee, any defenses except those enumerated in §§ 3-305(2) and 9-206(2), and as against the assignee of such a contract the buyer's alleged defenses of failure of consideration and subsequent promise and failure to repair the automobile which was the subject of the contract having been specifically waived in the instrument itself are unavailing. First Nat'l Bank v. Husted, 57 Ill. App. 2d 227, 205 N.E.2d 780 (2d Dist. 1965).

12. —Fraud in the inducement.

Fraud in the inducement is an insufficient defense to a waiver of defenses provision in an assignment clause (Uniform Commercial Code, § 9-206, subd [1]) since fraudulent inducement is not a defense "of a type which may be asserted against a holder in due course", in that fraud in the inducement renders an obligation voidable, but not void, and is also not an available misrepresentation defense (Uniform Commercial Code, § 3-305, subd [2], pars [b], [c]); however, plaintiff bank, the assignee of an equipment lease and guarantee executed by defendants as part of a franchise agreement with the assignor, a muffler franchisor, is not entitled to summary judgment to recover the balance due and owing under the lease and remains vulnerable to defendants' claim of fraud in the inducement at this juncture since it failed to submit any proof sufficient to meet its burden of establishing that it took the assignment in good faith and without notice of any claims or defenses; defendants' allegations that the assignor entered into the lease and franchise agreements with the express purpose of fleecing the defendants and that plaintiff had notice of the assignor's fraudulent conduct raise a triable issue of fact as to notice sufficient to defeat plaintiff's motion for summary judgment. Chase Manhattan Bank v. Finger Lakes Motors, Inc., 102 Misc. 2d 48 (1979).

Where (1) certain estoppel documents were substantial equivalent of agreement by lessee of machines that it would not assert against an assignee any claim or defense that it might have against the lessor, and (2) where such agreement by lessee was enforceable under UCC § 9-206(1) by assignee who took assignment for value, in good faith, and without notice of a claim or defense thereto, court would hold that in addition to certain defenses, which on an earlier appeal had been held to be barred by estoppel documents in suit, lessee also could not assert against an assignee defense of original lessor's fraud in the inducement where record failed to raise triable issue that assignee had had knowledge or notice of such fraud. B.V.D. Co. v. Marine Midland Bank-New York, 60 A.D.2d 544 (1st Dep't 1977).

13 —Warranties.

In action by creditor, to which installment contracts to purchase animal-feeding equipment had been assigned, for deficiency judgment for amount remaining unpaid by defendant buyers after creditor's repossession and sale of equipment at public auction, wherein buyers contended that creditor had purchased such contracts subject to all warranties and representations made to buyers by seller, court held (1) that contracts expressly provided (a) that seller intended to assign them to creditor, and (b) that buyers had consented to such assignments and condition thereof that seller would be solely responsible for any warranties made on sale of equipment, (2) that agreement by buyers not to assert against creditor any claim or defense that they might have against seller was clearly sanctioned by UCC § 9-206(1), (3) that since seller had assigned to creditor any security interest that seller had in equipment, seller did not retain purchase-money security interest therein within meaning of UCC § 9-206(2), and (4) that since terms of contracts clearly conferred on creditor, under

UCC § 9-206(1), status of holder in due course with respect to the assignments, buyers' remedies for any breach of express or implied warranties involved in sale lay only against seller, who was not party to suit. AgriStor Credit Corp. v. Lewellen, 472 F. Supp. 46 (N.D. Miss. 1979).

Where (1) lessor of computer, after purchasing it from manufacturer, leased it to lessee for 72 months at fixed rental per month, (2) lease provided that lessee could renew lease for one year for sum that equalled amount of one monthly rent payment and that at end of such renewal, lessee would become owner of computer, (3) lessee's obligation to pay rent was absolute and unconditional, and lease was not cancellable, (4) lessor disclaimed all warranties, express or implied, including implied warranties of merchantability and fitness for particular use, (5) computer did not function properly, and (6) lessee defended refusal to pay further rent on ground of failure of consideration, court held (1) that under UCC § 1-201(37), lease as a matter of law was actually intended as security agreement, especially since lessee could become owner of computer by paying amount that was equivalent to only one monthly rental, (2) that since lessor was to be viewed as conditional seller of computer, UCC § 9-206(2) applied with respect to effectiveness of lessor's disclaimer of warranties, (3) that warranty disclaimer in lease clearly satisfied requirements of UCC § 2-316(2) for exclusion or modification of warranties, (4) that lessee's remedy was solely against manufacturer of computer, instead of lessor, and (5) that under UCC § 9-501(1), lessor, with respect to lessee's failure to pay rent, had rights and remedies provided in security agreement between the parties, which agreement provided that on lessee's default and demand by lessor, lessee would pay amount equal to all unpaid rentals under the lease, plus interest at specified rate. Citicorp Leasing, Inc. v. Allied Institutional Distribs., Inc., 454 F. Supp. 511 (W.D. Okla. 1977).

Where buyer of new pickup truck sued dealer, manufacturer, and credit company to which buyer's instalment-purchase contract had been assigned for damages for breach of warranty and credit company counterclaimed for balance due on purchase price, rights of credit company were subject under UCC § 9-318 to all terms of contract between buyer and dealer, including any defenses arising from such contract, since buyer had not agreed pursuant to UCC § 9-206 not to assert any claims or defenses against credit company and language of contract did not prevent buyer from asserting defense of breach of express warranty. However, although evidence sustained defense of breach of express warranty, such defense was not complete bar to credit company's counterclaim for balance due on purchase price but could only be used under UCC § 2-717 as setoff against balance due, since buyer at time of suit had driven vehicle approximately 49,000 miles and had not rejected acceptance of vehicle or properly revoked acceptance thereof under the Uniform Commercial Code. Arnold v. Ford Motor Co., 90 N.M. 549, 566 P.2d 98 (1977).

Under Pennsylvania Code § 9-206(2), disclaimer of warranties contained in purchase money security agreement could not as matter of law disclaim implied warranties previously created in written sales arrangement. Tennessee Carolina Transp., Inc. v. Strick Corp., 283 N.C. 423, 196 S.E.2d 711, 83 A.L.R.3d 636 (1973).

Where the contract of purchase of certain alcoholic liquor dispensers contained an express warranty of merchantability, a subsequent conditional sales agreement extending credit to the purchaser, under which the purchaser acknowledged delivery and acceptance of the articles without warranty, guarantee or representation of any kind, could not limit or release the seller from liability for any warranty made by the seller at the time the sales contract was executed. L. & N. Sales Co. v. Stuski, 188 Pa. Super. 117, 146 A.2d 154 (1958).

14. Enforceability of waiver.

Contract which contained a provision stating that the purchaser "agrees not to set up any claim against the seller as a defense, counterclaim or offset to any action by any assignee for the time balance or for possession of the collateral," was effective under law of Mississippi where the assignee took the assignment "for value, in good faith and without notice of a claim or defense" and was enforceable by the assignee subject to any statutes or decisions which interpreted waiver of defense clauses as unconscionable in purchases of consumer goods. Grumman Credit Corp. v. Rippee, 487 F. Supp. 329 (N.D. Miss. 1980).

If assignee of lease concerning computers and computer equipment took assignment for value, in good faith and without notice of concurrent agreement that lease, would not be effective if certain acceptable and satisfactory equipment were not delivered, assignee could recover on lease notwithstanding lessor's alleged failure to deliver equipment where lease provided that lessee would not assert against assignee any defenses, counterclaims or offsets which it might have against lessor. National Bank of N. Am. v. DeLuxe Poster Co., 51 A.D.2d 582 (2d Dep't 1976).

In action for breach of warranty by purchaser of new truck against truck dealer, truck manufacturer, and credit company, which was wholly owned subsidiary of manufacturer, where truck was purchased under retail installment contract which was assigned to credit company, where purchaser defaulted on installment contract and credit company filed counter-claim against purchaser seeking recovery of unpaid balance still due and owing on truck, and where installment contract contained provision to effect that purchaser would settle any claim he had with seller and would not set up any such claim against any subsequent holder of contract, under UCC § 9-206(1) purchaser could not assert, as defense against claim of credit company, defect in truck. Cox v. Galigher Motor Sales Co., 158 W. Va. 685, 213 S.E.2d 475 (1975).

The waiver by the lessee of vending machines of any claims that it may have against the lessor is valid. Fairfield Lease Corp. v. Colonial Aluminum Sales, Inc., 3 U.C.C. Rep. Serv. 858 (1966, NY Sup).

Provisions of a conditional sales contract under which the buyer agreed to settle all claims of any kind against the seller directly with the seller, and that if the seller assigned the contract he would not use any such claim as a defense, setoff, or counterclaim against any effort by the holder to collect the amount due or to repossess the goods, clearly fall within the purview of this section and are enforceable by the security holder. Beam v. John Deere Co., 240 Ark. 107, 398 S.W.2d 218 (1966).

15. —Good faith.

Stating that "good faith" as used in UCC § 9-206 means more than "honesty in fact", the Civil Court of New York City held that where an assignee sought to bar a consumer from asserting claims and defenses to the underlying obligations and evidence disclosed the assignee had taken the contracts at a discount of 22 percent from face value within 24 hours of their execution and before the seller could possibly have made a credit investigation of the buyer, the assignee had not taken the contract "in good faith" and was not entitled to protection of "cut-off" provisions of § 9206. Star Credit Corp. v. Molina, 59 Misc. 2d 290 (1969).

16. —Notice.

Where assignee of retail sales contract involving farm machinery participated in sale by orally affirming seller's promises to buyer, where form of sales contract was furnished by assignee and where it was executed and assigned at about same time and upon same instrument, assignee did not take assignment without notice of claim or defense and was not entitled to enforcement protection provided by UCC § 9-206(1). Massey-Ferguson Credit Corp. v. Brown, 169 Mont. 396, 547 P.2d 846 (1976).

Motion of assignee of conditional sales contract for summary judgment would be denied notwithstanding that an agreement by a buyer that he would not assert against an assignee defenses he has against the seller is enforceable by an assignee who takes his assignment for value, in good faith, and without notice of a claim or defense, where the conditional buyer had denied that the assignee took the assignment without notice of his claims against the conditional seller. McCoy v. Mosley Mach. Co., 33 F.R.D. 287 (D. Ky. 1963).

17. —Relation of assignee to seller.

While Maryland recognizes the "close connectedness doctrine", there was no showing that credit company had a substantial voice in, or control of, or a vested interest in, the underlying transaction which would destroy good faith and render agreement unenforceable under UCC § 9-206(1), although (1) credit company prepared and supplied sales contract forms to the seller; (2) credit company permitted its name to be displayed for advertising purposes in seller's place of business; (3) credit company was aware of some complaints about the seller; and (4) credit company acquired about 2,500 such contracts from the seller in each of the last three years. Block v. Ford Motor Credit Co., 286 A.2d 228, 63 A.L.R.3d 1 (D.C. 1972).

A buyer who executes a conditional sales contract containing covenant not to assert against an assignee any defense, counterclaim or offset on account of breach of warranty or otherwise is bound by its agreement and the fact that the assignee is a subsidiary of the assignor seller is not sufficient to cast doubt upon assignee's status as a bona fide purchaser for value. B.W. Acceptance Corp. v. Richmond, 46 Misc. 2d 447 (1965).

18. —Particular applications.

In action by assignee of computer-equipment lease for rent due under lease, (1) although applicable provisions of UCC Article 2 should be applied to equipment leases, entire article would not be applied on theory that equipment lease is transaction in goods under UCC § 2-102; (2) lease in issue was not unconscionable under UCC § 2-302, since it conferred rights and imposed duties on both lessor and lessee, and parties to lease had virtually equal bargaining power; (3) language in lease disclaiming implied warranties of merchantability and fitness were sufficiently conspicuous under UCC § 2-316(2); and (4) since defense that plaintiff was not assignee in good faith within meaning of UCC § 9-206(1) presented fact issue that could not be resolved solely as issue of law, trial court erred in dismissing defendant's amended answer on ground that it raised insufficient defense as matter of law. Walter E. Heller & Co. v. Convalescent Home of First Church of Deliverance, 49 Ill. App. 3d 213, 365 N.E.2d 1285 (1st Dist. 1977).

In action by bank as seller's assignee against buyer of motor home upon default in payments, agreement by buyer not to assert defenses against seller's assignee was binding on buyer under UCC § 9-206(1), where bank took assignment from seller in good faith and without notice of any claim or defense, buyer made payments for almost one year without notifying bank of any defect, bank did not maintain close relationship as financier with seller when contract was purchased, and bank was not closely connected with seller's business operations. Are v. Barnett Bank, 330 So. 2d 250 (Fla. App. 1976).

In action by assignee of retail installment contracts, waiver of defenses clause in contract signed by purchasers was effective where assignee purchased contract for value, in good faith, and without notice of any claim or defense. Although retail installment contracts are not negotiable instruments within meaning of UCC § 3-104, standards set forth in UCC § 9-206(1) relating to such instruments are equally applicable in determining whether assignee is entitled to protection of waiver of defense clause. Personal Fin. Co. v. Meredith, 39 Ill. App. 3d 695, 350 N.E.2d 781 (5th Dist. 1976).

Buyer of equipment covered by purchase money security interest could not assert defenses of breach of warranty and failure of consideration against seller's assignee where, after default, assignee repossessed and sold equipment and brought action for balance due on contract, and where contract contained provisions disclaiming warranties and waiving defenses against assignees: (1) provision disclaiming warranties was not unconscionable within meaning of UCC § 2-302; (2) provision waiving defenses against assignees was not unconscionable and, in fact, was expressly authorized by UCC § 9-206(1); (3) evidence that assignee paid full value for note, that at time of assignment assignee had no knowledge that equipment was defective, that none of seller's employees or officers were officers or employees of assignee and that seller and assignee were two separate and distinct companies, established assignee's right to enforce provision waiving defenses and, since defenses raised by buyer could not be raised against holder in due course, they could not be raised by buyer in present action. Westinghouse Credit Corp. v. Chapman, 129 Ga. App. 830, 201 S.E.2d 686 (1973).

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of statute respecting sale, assignment, or transfer of retail instalment contracts. 10 A.L.R.2d 447.

Estoppel of obligor to assert against transferee of conditional sales contract, instalment improvement or repair contract, or related commercial paper, defenses or equities available against transferor. 44 A.L.R.2d 196.

Am Jur. 6 Am. Jur. 2d, Assignments § 69.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:241-9:244 (agreement not to assert defenses against assignee; modification of sales warranties).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2010 through 253:2015 (agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists).

CJS. 79 C.J.S., Secured Transaction § 130 et seq.

§ 75-9-404. Rights acquired by assignee; claims and defenses against assignee.

(a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable.

SOURCES: Former 1972 Code § 75-9-404 [Codes, 1942, § 41A:9-404; Laws, 1966, ch. 316, § 9-404; Laws, 1977, ch. 452, § 27; Laws, 1978, ch. 401, § 1; Laws, 1985, ch. 381, § 2, eff from and after July 1, 1985] is now found in comparable provisions enacted at § 75-9-513 by Laws, 2001, ch. 495, § 1. Present § 75-9-404 was derived from former 1972 Code § 75-9-318 [Codes, 1942, § 41A:9-318; Laws, 1966, ch. 316, § 9-318; Laws, 1977, ch. 452, § 23, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Assignment of security interest in motor vehicle, see § 63-21-47.

Delegation of performance by assignment of sales contract, see § 75-2-210(4) and (5).

Assignment of letters of credit, see §§ 75-5-112 and 75-5-114.

JUDICIAL DECISIONS

I. Under Current Law.

1. Applicability.
2.-5. [Reserved for future use.]

II. Under Former § 75-9-318(1).

A. In General.

6. Generally.
7. Contract rights (prior to 1977 Amendment).

B. Defenses Against Assignee.

8. In general.
9. Waiver.
10. Contract terms, claims, and defenses.
11. Defenses accruing prior to notice.

I. Under Current Law.

1. Applicability.

Production money security interest a lender held in a farmer's crops under the Food Security Act of 1985 took priority over a buyer's right to apply setoffs to cover the farmer's failure to fulfill one of his contracts; this section did not govern the case because the lender was not merely an assignee of the farmer's accounts, and proceeds that the lender was entitled to recover included the full value of the crops under the contracts. Guar. Bank & Trust Co. v. Agrex, Inc., — F.3d —, 2016 U.S. App. LEXIS 7731 (5th Cir. Apr. 28, 2016).

2.-5. [Reserved for future use.]

II. Under Former § 75-9-318(1).

A. In General.

6. Generally.

Under UCC § 9-318(4), contract which prohibits assignment of money due thereunder or to become due is ineffective to prevent creation of security interest, under Article 9, for purpose of extending credit. Mississippi Bank v. Nickles & Wells Constr. Co., 421 So. 2d 1056 (Miss. 1982).

Contention that bank, by enforcing its security interest in proceeds of debtor's construction contract with third person, assumed responsibility for performance of such contract under UCC § 9-318(1)(a) was not sustainable where bank, which had set off contract proceeds deposited by debtor in general account with bank against debt owed by debtor, exercised such right of setoff not under its security interest but pursuant to its common-law right, as supplemented by provision in note evidencing debtor's obligation to bank. Cherokee Carpet Mills, Inc. v. Worthen Bank & Trust Co., 262 Ark. 776', 561 S.W.2d 310 (1978).

In buyer's action against assignee of note and security agreement, executed by buyer in purchase of mobile home, for damages for breach of implied warranties attaching to home, even assuming that buyer did not make enforceable agreement not to assert against assignee any defenses or claims arising out of such sale that buyer might have against seller, buyer still could not base cause of action for affirmative relief on UCC § 9-318(1)(a), since such section does not create cause of action for money damages against assignee of commercial paper. Anderson v. Southwest Sav. & Loan Ass'n, 117 Ariz. 246, 571 P.2d 1042, 22 U.C.C. Rep. Serv. 1275 (Ct. App. 1977) (rejecting buyer's contention that phrase "subject to" in UCC § 9-318(1) a) transformed assignee's right to receive installment payments from buyer into liability for breach-of-warranty claims that buyer allegedly had against dealer which sold mobile home to buyer).

Purpose of UCC § 9-318(3) is not to identify or limit collateral that might be made subject of valid assignment, but to clarify right of account debtor to continue to make payments directly to assignor until receipt by account debtor of notice or direction to make future payments directly to assignee, notwithstanding fact that account debtor may have had prior notice or knowledge that collateral had been assigned. Valley Nat'l Bank v. Flagstaff Dairy, 116 Ariz. 513, 570 P.2d 200 (Ct. App. 1977).

Since "claim" within UCC § 9-318(1) includes set-offs and counterclaims, where assignee obtains money which assignor could only retain upon performance of a contract, and where assignor failed to perform the contract, the assignee cannot retain mistaken, or even negligent, payments made to it by the debtor unless there has been a subsequent change of position by the assignee; there was no such change of position here where assignee had made no further loans on basis of payments received. Farmers Acceptance Corp. v. DeLozier, 178 Colo. 291, 496 P.2d 1016 (1972).

Uniform Commercial Code § 9-318 and § 9-106 are apparently limited to instances of assignments of executory contracts. Gramatan Co. v. D'Amico, 50 Misc. 2d 233 (1966).

7. Contract rights (prior to 1977 Amendment).

"Contract right" is a right to be earned by future performance under an existing contract. Contract rights may be regarded as potential accounts, and they become accounts as performance is made under the contract. Recognition of a contract right as collateral in a security transaction makes clear that UCC Article 9 rejects any lingering common-law notion that only rights already earned can be assigned. In most situations, the same rules apply to both accounts and contract rights. First Nat'l Bank v. Mountain States Tel. & Tel. Co., 91 N.M. 126, 571 P.2d 118, 22 U.C.C. Rep. Serv. 1278, 100 A.L.R.3d 1212 (1977) (holding, where party to work contract assigned right to payment before work was performed, that other party to contract was account debtor within meaning of UCC § 9-318(3).

The right to receive money due or to become due under an existing contract may be assigned even though the contract itself may not be assignable; this well-settled principle under the law of assignments has been codified in UCC § 9-318(4). Farmers Acceptance Corp. v. DeLozier, 178 Colo. 291, 496 P.2d 1016 (1972).

B. Defenses Against Assignee.

8. In general.

Under subsection (1)(a), of the instant section the rights of an assignee are subject to any defense or claim arising out of the contract between the assignor and the account debtor, regardless of notice. Fall River Trust Co. v. B.G. Browdy, Inc., 346 Mass. 614, 195 N.E.2d 63 (1964).

9. Waiver.

Where financer-assignee did not take assignment of retail installment contract in good faith, purchaser was not precluded from raising certain defenses under the installment contract which provided for waiver of defenses against assignee. Rehurek v. Chrysler Credit Corp., 262 So. 2d 452, 54 A.L.R.3d 1210 (Fla. App. 1972), cert. denied, 267 So. 2d 833 (Fla. 1972).

10. Contract terms, claims, and defenses.

In an action by a bank seeking a deficiency judgment under an installment loan agreement for the purchase of a Jeep vehicle, the borrowers were entitled to assert their breach of warranty defense under § 75-9-318. Jones v. Deposit Guar. Nat'l Bank, 427 So. 2d 97 (Miss. 1983).

In action by assignee of retail-installment contract for sale of new jeep for deficiency judgment following assignee's repossession sale of jeep, debtor-purchasers, who had valid breach-of-warranty defense against seller because jeep's defects occurred while it was still within its express-warranty period, could assert such defense against assignee under UCC § 9-318(1)(a) because they had not waived it under UCC § 9-206(1). Jones v. Deposit Guar. Nat'l Bank, 427 So. 2d 97 (Miss. 1983).

Under UCC § 9-318(4), contract which prohibits assignment of money due thereunder or to become due is ineffective to prevent creation of security interest, under Article 9, for purpose of extending credit. Mississippi Bank v. Nickles & Wells Constr. Co., 421 So. 2d 1056 (Miss. 1982).

In action on cross-complaint by owner and general contractor on apartment-building project against subcontractor and bank, which was subcontractor's creditor, for loss incurred as result of subcontractor's failure to pay materialmen, where evidence showed (1) that owner-general contractor had made adequate progress payments during building's construction, which were sufficient to enable subcontractor to pay its materialmen, (2) that such payments had been made by checks payable jointly to subcontractor and defendant bank, (3) that bank had loaned money to subcontractor and had taken assignment of subcontractor's right to receive progress payments, (4) that bank had sent each progress-payment application of subcontractor to owner-general contractor, (5) that subcontractor had falsely certified on each application that all bills for labor and materials covered by earlier progress payments had been paid, (6) that owner-general contractor had had no knowledge of subcontractor' failure to pay materialmen, and (7) that bank had cashed progress-payment checks and applied part of the money to subcontractor's indebtedness to bank, court held with regard to application of UCC § 9-318(1)(a), which provides that rights of assignee (bank) are subject to all terms of contract between account debtor (owner-general contractor) and assignor (subcontractor) and to any defense or claim arising from such contract, (1) that owner-general contractor was entitled to recover amount that bank had applied against its loans to subcontractor, and (2) that although owner-general contractor had been remiss in not verifying subcontractor's representations that it had paid all materialmen, bank had been even more remiss, since it had not been an innocent recipient of the progress payments, but had had good reasons to doubt subcontractor's representations that materialmen had been paid. Benton State Bank v. Warren, 263 Ark. 1, 562 S.W.2d 74 (1978).

In action by assignee of book account, arising out of sale of toys by seller to defendant buyer, to collect balance due under such sale, where (1) evidence showed that defendant's purchase agreement contained provision guaranteeing that there would be no drop in price of toys sold to defendant for period of twelve months, and (2) defendant claimed that when seller went out of business and plaintiff assignee held distress sale of seller's remaining inventory, such sale violated no-drop-in-price provision of defendant's contract and entitled him to setoff against balance due on account receivable, court held (1) that distress sale violated seller's agreement with defendant, (2) that under UCC § 9-318(1)(a), rights of plaintiff assignee of the account were subject to defendant's contract defenses or claims, (3) that it was immaterial whether such defenses or claims arose before or after seller notified defendant of the assignment, and (4) that since plaintiff's liquidation of seller's inventory at prices below those fixed in defendant's purchase order constituted a breach of the no-drop-in-price clause in the contract, plaintiff's claim was subject to claim of defendant that arose out of such breach. James Talcott, Inc. v. H. Corenzwit & Co., 76 N.J. 305, 387 A.2d 350 (1978).

Under UCC § 9-318(1)(a), rights of assignee of account receivable are subject to contract defenses or claims of account debtor arising by virtue of terms of contract out of which the receivable was created. In such case, it is immaterial whether such defenses or claims arose before or after notice of the assignment. James Talcott, Inc. v. H. Corenzwit & Co., 76 N.J. 305, 387 A.2d 350 (1978).

In action by assignee for balance due on sales contract involving trade-in of defendant's combine for combine owned by seller and assignor of such contract (defunct implement dealer), where evidence showed that defendant traded in his combine to assignor; that contract was concurrently executed and assigned to plaintiff; that at time contract was entered into and assigned, both assignor and assignee made certain representations to defendant concerning combine that defendant received under contract; that in violation of such representations, assignor and assignee failed to perform required repair work on combine received by defendant, and that they ultimately took possession of such combine and thereby repudiated the sales contract; and that combine that defendant traded in was not returned to him, defendant could recover on counterclaim against plaintiff-assignee value of combine defendant had traded in, in addition to being absolved from making any payments on the contract, because (1) under UCC § 9-318(1), rights of assignee of contract rights are subject to all terms of contract between account debtor and assignor, and also to any defense or claim arising therefrom; (2) term "claim" includes setoffs and counterclaims; (3) in present case, plaintiff was more than mere assignee accepting right to payments under a contract, since plaintiff had participated in making the sale by orally affirming seller's promises to defendant and contract was concurrently executed and assigned to plaintiff; and (4) had plaintiff not taken assignment under such circumstances, UCC § 9-317 would have applied, and defendant's recourse would only have been against defunct assignor for indebtedness arising out of contract. Massey-Ferguson Credit Corp. v. Brown, 173 Mont. 253, 567 P.2d 440 (1977).

Where buyer of new pickup truck sued dealer, manufacturer, and credit company to which buyer's instalment-purchase contract had been assigned for damages for breach of warranty and credit company counterclaimed for balance due on purchase price, rights of credit company were subject under UCC § 9-318 to all terms of contract between buyer and dealer, including any defenses arising from such contract, since buyer had not agreed pursuant to UCC § 9-206 not to assert any claims or defenses against credit company and language of contract did not prevent buyer from asserting defense of breach of express warranty. However, although evidence sustained defense of breach of express warranty, such defense was not complete bar to credit company's counterclaim for balance due on purchase price but could only be used under UCC § 2-717 as setoff against balance due, since buyer at time of suit had driven vehicle approximately 49,000 miles and had not rejected acceptance of vehicle or properly revoked acceptance thereof under the Uniform Commercial Code. Arnold v. Ford Motor Co., 90 N.M. 549, 566 P.2d 98 (1977).

Claim to which assignee is subject under UCC § 9-318 includes set-off, regardless of whether it has any connection with assertion in assignee's complaint. Investment Serv. Co. v. North Pac. Lumber Co., 261 Or. 43, 492 P.2d 470 (1972).

An assignee of a contract for the sale of lumber is subject to any setoff the purchaser of the lumber might have because of a defect in the lumber sold, and under UCC § 9-318 the setoff is available for use against any claim made by the assignee regardless of whether it has any connection with the claim asserted in the assignee's complaint. Investment Serv. Co. v. North Pac. Lumber Co., 261 Or. 43, 492 P.2d 470 (1972).

Assignee of contract rights is subject to all equities and defenses which could have been raised by debtor against assignor, with exception of those claims and defenses which are both unrelated to underlying contract and arise after debtor is notified of assignment. Farmers Acceptance Corp. v. DeLozier, 178 Colo. 291, 496 P.2d 1016 (1972).

11. Defenses accruing prior to notice.

Setoff arising out of separate transaction subsequent to assignment notification could not bind assignee. Ertel v. Radio Corp. of Am., 261 Ind. 573, 307 N.E.2d 471

(1974), on remand, 171 Ind. App. 51, 354 N.E.2d 783 (1976).

In action by assignee of transportation company for balance due under contract with State Park Commission, state, as "account debtor," was entitled to assert claim against transportation company for uncollected withholding taxes which became due before state had notice of assignment. Central State Bank v. State, 73 Misc. 2d 128 (1973).

Where corporation paid note signed by corporation president but not by corporation, corporation acquired rights of transferee and could not enforce note against maker until date when it could have been enforced by transferor; so that corporation as account debtor was not entitled to setoff, since it had had notification of assignment of accounts more than 3 months before claim against assignor on note accrued. Commercial Sav. Bank v. G & J Wood Prods. Co., 46 Mich. App. 133, 207 N.W.2d 401 (1973).

In action by assignee of account, where account debtor raised defense based on assignor's alleged breach of contract out of which assigned debt arose and counterclaim predicated on apparently unrelated, unpaid loan, notice of assignment would only have relevance to counterclaim and not to defense, because only claims arising independently of contract between account debtor and assignor which accrue after notification are cut off thereby. Gateway Nat'l Bank v. Saxe, Bacon & Bolan, 40 A.D.2d 653 (1st Dep't 1972).

Term "accrue" as used in Code § 9-318(1) refers to time when cause of action exists, and buyer of plywood was not entitled to setoff against amount due assignee of invoice damages caused by breaches of contract by seller of plywood on orders not included in assigned invoice, where breaches of contract occurred after assignment of invoice and notification to buyer of assignment. Seattle-First Nat'l Bank v. Oregon Pac. Indus., Inc., 262 Or. 578, 500 P.2d 1033 (1972).

Whether an account debtor may set up against an assignee a defense not arising out of the contract between the assignor and the account debtor depends, under subsection (1)(b) of the instant section, on whether the account debtor's claim accrued before the debtor received notice of the assignment. Fall River Trust Co. v. B.G. Browdy, Inc., 346 Mass. 614, 195 N.E.2d 63 (1964).

Where a corporation (account debtor) delivered goods to another corporation (assignor) for dyeing and finishing of the goods, and the assignor assigned accounts receivable to a bank (assignee) to secure it for money advanced to the assignor, where the assignor was adjudicated a bankrupt, where the assignee sought to recover on the assigned accounts against the account debtor, and where the latter set up the defense that it had delivered to the assignor goods of a value in excess of the amount sought to be recovered by the assignee, which goods had not been returned, it was held that the case was governed by subsection (1) of the instant section, that if the missing goods were processed under the contract which gave rise to the assigned accounts the rights of the assignee, under subsection (1) of the instant section would be subject to any defense or claim arising from the terms of the bailment contract between the assignor and the account debtor regardless of notice and that it would make no difference when the assignee gave the account debtor notice of the assignment, but that if the missing goods were other than those on which the accounts arose the rights of the parties would be governed by subsection (1)(b) of the instant section, and whether the assignee's rights would be subject to the account debtor's claim would hinge on whether debtor's claim accrued before it received notice of the assignments. Inasmuch as the record before the appellate court failed to show what the necessary facts were, the case was remanded for a determination of such facts. Fall River Trust Co. v. B.G. Browdy, Inc., 346 Mass. 614, 195 N.E.2d 63 (1964).

RESEARCH REFERENCES

ALR. Constitutionality, construction and application of statute respecting sale, assignment or transfer of retail instalment contracts. 10 A.L.R.2d 447.

Validity of anti-assignment clause in contract. 37 A.L.R.2d 1251.

"Insecurity" acceleration or repossession clause as affecting question whether transferee of commercial paper given by purchaser of chattel and secured by conditional sale, retention of title, or chattel mortgage is subject to defenses which chattel purchaser could assert against seller. 44 A.L.R.2d 8.

Validity, in contract for installment sale of consumer goods, or commercial paper given in connection therewith, or provision waiving, as against assignee, defenses good against seller. 39 A.L.R.3d 518.

Construction and operation of UCC § 9-318(3) providing that account debtor is authorized to pay assignor until he receives notification to pay assignee. 100 A.L.R.3d 1218.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 18, 22, 46, 68, 69.

13 Am. Jur. 2d, Buildings and Construction Contracts § 100.

68A Am. Jur. 2d, Secured Transactions § 449 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:591-9:594, 9:601-9:603 (assignment of account).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2074 through 253:2100 (assignment by secured party).

CJS. 6A C.J.S., Assignments §§ 80, 81, 87-89.

79 C.J.S., Secured Transactions § 316.

77A C.J.S., Sales §§ 210, 212 et seq.

§ 75-9-405. Modification of assigned contract.

(a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Subsection (a) applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Section 75-9-406(a).

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health-care-insurance receivable.

SOURCES: Former 1972 Code § 75-9-405 [Codes, 1942, § 41A:9-405; Laws, 1966, ch. 316, § 9-405; Laws, 1968, ch. 491, § 1; Laws, 1977, ch. 452, § 28; Laws, 1985, ch. 381, § 3, eff from and after July 1, 1985] is now found in comparable provisions enacted at §§ 75-9-514 and 75-9-519 by Laws, 2001, ch. 495, § 1. Present § 75-9-405 was derived from former 1972 Code § 75-9-318 [Codes, 1942, § 41A:9-318; Laws, 1966, ch. 316, § 9-318; Laws, 1977, ch. 452, § 23, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Assignment of security interest in motor vehicle, see § 63-21-47.

Delegation of performance by assignment of sales contract, see § 75-2-210(4) and (5).

Assignment of letters of credit, see §§ 75-5-112 and 75-5-114.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-318(2).

6. Modification or substitution.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-318(2).

6. Modification or substitution.

In cross-action by assignee of contract, who as security for loan had been assigned proceeds of assignor's contract to furnish cross-defendant all paper cores used in cross-defendant's business, for cross-defendant's failure to honor such assignment, court held that (1) plaintiff assignee was not bound by account stated between assignor and cross-defendant, since some items that might properly be set off as between assignor and cross-defendant could not properly be deducted by cross-defendant from contract proceeds owed to assignee, (2) cross-defendant's purchase of core paper to enable assignor to perform contract, and also rent deductions made by cross-defendant to assignor, were under UCC § 9-318(2) commercially reasonable modifications of contract between assignor and cross-defendant, (3) amounts deducted by cross-defendant for rent and core paper should therefore be credited against amount owed by cross-defendant to assignee, and (4) cross-defendant was not entitled to deductions for sums that it had paid into court in certain garnishment proceedings, since debts involved in such proceedings did not arise out of the assigned contract and their payment could not be said to be a proper modification of such contract under UCC § 9-318(2). Madden Eng'g Corp. v. Major Tube Corp., 568 S.W.2d 614 (Tenn. Ct. App. 1977).

RESEARCH REFERENCES

ALR. Constitutionality, construction and application of statute respecting sale, assignment or transfer of retail instalment contracts. 10 A.L.R.2d 447.

Validity of anti-assignment clause in contract. 37 A.L.R.2d 1251.

"Insecurity" acceleration or repossession clause as affecting question whether transferee of commercial paper given by purchaser of chattel and secured by conditional sale, retention of title, or chattel mortgage is subject to defenses which chattel purchaser could assert against seller. 44 A.L.R.2d 8.

Validity, in contract for installment sale of consumer goods, or commercial paper given in connection therewith, or provision waiving, as against assignee, defenses good against seller. 39 A.L.R.3d 518.

Construction and operation of UCC § 9-318(3) providing that account debtor is authorized to pay assignor until he receives notification to pay assignee. 100 A.L.R.3d 1218.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 18, 22, 46, 68, 69.

13 Am. Jur. 2d, Buildings and Construction Contracts § 100.

68A Am. Jur. 2d, Secured Transactions § 449 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:591-9:594, 9:601-9:603 (assignment of account).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2074 through 253:2100 (assignment by secured party).

CJS. 6A C.J.S., Assignments §§ 80, 81, 87-89.

79 C.J.S., Secured Transactions § 316.

77A C.J.S., Sales §§ 210, 212 et seq.

§ 75-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and Sections 75-2A-303 and 75-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 75-9-610 or an acceptance of collateral under Section 75-9-620.

(f) Except as otherwise provided in Sections 75-2A-303 and 75-9-407 and subject to subsections (h) and (i), a rule of law, statute or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

SOURCES: Former 1972 Code § 75-9-406 [Codes, 1942, § 41A:9-406; Laws, 1966, ch. 316, § 9-406; Laws, 1977, ch. 452, § 29; Laws, 1985, ch. 381, § 4, eff from and after July 1, 1985] is now found in comparable provisions enacted at § 75-9-512 by Laws, 2001, ch. 495, § 1. Present § 75-9-406 was derived from former 1972 Code § 75-9-318 [Codes, 1942, § 41A:9-318; Laws, 1966, ch. 316, § 9-318; Laws, 1977, ch. 452, § 23, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 10, eff from and after July 1, 2013.

Cross References — Assignment of security interest in motor vehicle, see § 63-21-47.

Delegation of performance by assignment of sales contract, see § 75-2-210(4) and (5).

Assignment of letters of credit, see §§ 75-5-112 and 75-5-114.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-318(3), (4).

A. Notice of Assignment.

6. In general.
7. Service and proof of notice.
8. Sufficiency of notice.
9. Proof of assignment.

B. Contract Terms Restricting Assignment.

10. In general.
11. Consent provision; invalid.
12. —Valid.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-318(3), (4).

A. Notice of Assignment.

6. In general.

UCC § 9-318(3) reiterates pre-Code rule that payment by debtor to his original creditor protects debtor against assignee of the debt, unless debtor has notice of the assignment. Kornitz v. Commonwealth Land Title Ins. Co., 81 Wis. 2d 322, 260 N.W.2d 680 (1978).

UCC § 9-318(3) is intended to protect debtor, in situation where original creditor has assigned his security interest, by providing that debtor will not be held in default if he pays original creditor before receiving notice that original creditor has assigned his security interest. UCC § 9-318(3) does not apply to situation where debtor himself is would-be "assignor" who attempts to free from creditor's security interest sums due debtor merely by arranging to have such sums paid directly to another. Northwestern Nat'l Bank S.W. v. Lectro Sys., 262 N.W.2d 678 (Minn. 1977).

UCC § 9-318(3) establishes no specific requirements as to the form of, or the language to be used in, the notice of assignment of an account. The section provides only that a notification that does not reasonably identify the rights assigned is ineffective. However, what is "reasonable" is not left to the arbitrary decision of the account debtor. If there is doubt as to the adequacy of either the notification or the proof submitted as to the making of the assignment, the account debtor may not be safe in disregarding the notification or proof, unless he has notified the assignee with commercial promptness of the respects in which the identification or proof is considered defective. First Nat'l Bank v. Mountain States Tel. & Tel. Co., 91 N.M. 126, 571 P.2d 118, 22 U.C.C. Rep. Serv. 1278, 100 A.L.R.3d 1212 (1977) (holding that account debtor could readily determine from assignment form in suit that assignee had purchased assignor's right, title, and interest in proceeds of work contract with account debtor and that assignee was therefore entitled to be paid such proceeds).

In Department of Labor & Industry v. Asbury Metropolitan Hotel Co. (1963) 80 NJ Super 486, 194 A2d 244, 1 UCCRS 577 an action by a state agency to recover penalties for an employer's alleged violation in honoring assignment of wages by certain of his employees to an employment agency, the court stated that if the assignments of wages were valid and notice thereof had been given to the employer, he would have been legally obligated under general law of assignability to pay over the sums assigned to the assignee, and that failure to do so under this basic law of contracts would make him personally liable to the assignee, citing subsection (3) of the instant section. Department of Labor & Indus. v. Asbury Metro. Hotel Co., 80 N.J. Super. 486, 194 A.2d 244 (App. Div. 1963).

7. Service and proof of notice.

Failure of bankrupt assignor to list debt owed by account debtor on assignor's schedule of assets did not constitute fraud in bankruptcy proceeding where assignor under UCC § 9-318(3) had no right to receive payment after assignment of account and account debtor had been given notification of such assignment. United States v. Moynagh, 566 F.2d 799 (1st Cir. Mass. 1977), cert. denied, 435 U.S. 917, 98 S. Ct. 1475, 55 L. Ed. 2d 510 (1978).

Account debtor did not receive notice of assignments made by its creditor to bank where, inter alia, notice was given to employee of debtor who was not in such position that notice to him could reasonably be construed to be notice to debtor. Bank of Salt Lake v. Corporation of President of Church of Jesus Christ of Latter-Day Saints, 534 P.2d 887 (Utah 1975).

Where creditor with perfected security interest in debtor's accounts and contract rights brought action against state to recover money held by state on account for debtor in payment for certain survey and design work performed for state by debtor, and where state claimed right to set off unpaid withholding taxes and unemployment insurance contributions owed by debtor to state: (1) Under UCC § 9-318, state was account debtor and, thus, secured creditor was subject to any defense or claim that state had against debtor before state received notification of assignment of account; (2) Secured party's filing of financing statement with department of state did not constitute actual notice to state of such assignment and, thus, state's right to assert claims for unpaid taxes and unemployment insurance was not cut off until secured party made demand on state controller for money due to debtor. Chase Manhattan Bank v. State, 48 A.D.2d 11 (3d Dep't 1975), aff'd, 40 N.Y.2d 590, 388 N.Y.S.2d 896, 357 N.E.2d 366 (1976).

Evidence supported finding of notification of assignment within UCC § 9-318(3) where invoices were mailed in envelopes with return address and were not returned and where check used to pay invoice bore invoice number notation in lower left corner. Taubenhaus v. Jung Factors, Inc., 478 S.W.2d 149 (Tex. Civ. App. 1972).

8. Sufficiency of notice.

Account debtor did not receive sufficient notice of assignment of account and therefore was authorized to continue making payments to assignor, under § 75-9-318(3), where account debtor, who was farmer, was shown letter describing assignment while out in rice field without his reading glasses, and he signed it with understanding that it was routine account verification, where account debtor was not given copy of letter, where letter neither explicitly stated that account had been assigned nor identified which of account debtor's corporate accounts with assignor was involved, and where, over course of one year or more, account debtor's corporations paid over $50,000 to assignor by checks made payable solely to assignor, and assignee never complained during this period about way payments were made. Warrington v. Dawson, 798 F.2d 1533 (5th Cir. 1986).

Letter from assignee of contract for manufacture of hydraulic valves to assignor's account debtor, which requested account debtor to make payments due under such contract to assignee but which did not identify contract by date or type of product contracted for, was not sufficient notice of such assignment under UCC § 9-318(3). Progressive Design, Inc. v. Olson Bros. Mfg. Co., 200 Neb. 291, 263 N.W.2d 465 (1978).

Under UCC § 9-318, notice at bottom of each invoice sent by contractor to debtor indicating that checks should be made payable to named bank and named contractor was not sufficient as a matter of law to put debtor on notice that contractor's right to payment was assigned to bank, where the notation did not reasonably identify any rights existing in bank and debtor received invoices before contractor made assignment to bank. Citizens State Bank v. J.M. Jackson Corp., 537 S.W.2d 120 (Tex. Civ. App. 1976).

Notice of assignment which was sent by registered mail and received by account debtor at its shipping dock was sufficient, although it never reached account debtor's accounting department. Ertel v. Radio Corp. of Am., 261 Ind. 573, 307 N.E.2d 471 (1974), on remand, 171 Ind. App. 51, 354 N.E.2d 783 (1976).

Under UCC §§ 9-502 and 9-318(3), account debtor was under obligation to make payment to assignee to whom creditor had assigned all of its accounts receivable, instead of making payment directly to creditor, where assignee sent account debtor registered letter that notified debtor that assignee held security agreement with creditor covering all of creditor's accounts receivable and inventory and demanding payment of all monies due to creditor, notwithstanding that at time assignee sent its notice, account debtor's obligation to creditor was not "account" receivable of creditor, in that account debtor had not received creditor's performance which would obligate debtor to make payment. Marine Nat'l Bank v. Airco, Inc., 389 F. Supp. 231 (W.D. Pa. 1975).

Merely authorizing payment of stated sum to particular person cannot be considered as notification that such sum had been assigned to individual to whom payment was authorized. S & W Trucks, Inc. v. Nelson Auction Serv., Inc., 80 N.M. 423, 457 P.2d 220 (Ct. App. 1969).

9. Proof of assignment.

In action for conversion of milk and sale proceeds thereof, where (1) perfected security agreement covering contract for sale of cows and dairy equipment provided that secured party would have lien on all milk produced by cows, that all milk should be sold by defendant who was not party to sales contract, and that defendant should pay specified monthly sum from proceeds of such sales to secured party, and (2) where defendant notified secured party that authorization to pay contained in security agreement was not acceptable as assignment of sales proceeds and requested secured party to memorialize such agreement on forms acceptable to defendant, but secured party never complied with such request, court would hold (1) that under UCC § 9-306(2), authorization in security agreement for sale of milk (collateral) waived any interest of secured party in proceeds of collateral; (2) under UCC § 9-318(3), defendant had right to make reasonable request that secured party furnish proof of assignment of proceeds of sales; and (3) since such proof was never furnished, no assignment was ever made. Raley v. Milk Producers, Inc., 90 N.M. 720, 568 P.2d 246 (Ct. App. 1977), cert. denied, 91 N.M. 3, 569 P.2d 413 (1977).

B. Contract Terms Restricting Assignment.

10. In general.

Under UCC § 9-318(4), contract which prohibits assignment of money due thereunder or to become due is ineffective to prevent creation of security interest, under Article 9, for purpose of extending credit. Mississippi Bank v. Nickles & Wells Constr. Co., 421 So. 2d 1056 (Miss. 1982).

Under the Mississippi Uniform Commercial Code any contract which prohibits the assignment of money due or to become due thereunder is ineffective to prevent the creation of a security interest for the purpose of extension of credit under Chapter 9. Mississippi Bank v. Nickles & Wells Constr. Co., 421 So. 2d 1056 (Miss. 1982).

Where (1) debtor at time it borrowed $250,000 from bank purchased $13,000 certificate of deposit which was nonnegotiable and nonassignable unless assignment was consented to and recorded on bank's books, (2) bank's customer contract with debtor authorized it to apply debtor's account, whether savings or certificate of deposit, to any indebtedness due bank from debtor, (3) debtor without bank's consent or knowledge assigned certificate to indemnity company to provide collateral for bond that debtor purchased from such company, (4) indemnity company thereafter sent certificate to bank with request for payment, and (5) bank, which had not changed its position in reliance on such certificate, thereupon set off funds represented by certificate against debt owed by debtor and demanded that balance of debt be paid, federal court in absence of clearly controlling precedents in decisions of Florida Supreme Court would certify following questions to such court: (1) Was assignment of certificate of deposit as security for purchase of bond a transfer that was entitled to secured-transaction treatment under Florida UCC Art 9? (2) Was such transaction excluded from coverage under Florida UCC Art 9 by Florida UCC § 9-104(9) (Official UCC § 9-104(i)) or Florida UCC § 9-104(11) (Official UCC § 9-104(k))? (3) Did Flordia UCC § 9-318(4) (Official UCC § 9-318(4)) invalidate prohibition against assignment of certificate without bank's consent and notation of assignment on bank's books? (4) Was bank's asserted right of setoff established by Florida UCC § 9-318(1) (Official UCC § 9-318(1))? Bornstein v. Citizens Nat'l Bank, 564 F.2d 721 (5th Cir. Fla. 1977).

UCC § 9-318 makes ineffective a term in any contract prohibiting assignment of contract right, i.e. a right to payment. Macke Co. v. Pizza of Gaithersburg, Inc., 259 Md. 479, 270 A.2d 645, 53 A.L.R.3d 461 (1970).

Subsection (4) of the instant section was referred to, for comparison purposes, in Security Nat. Bank v. General Motors Corp. (1963) 345 Mass 434, 187 NE2d 820, in connection with the proposition that a prohibition in a contract against the assignment of any rights thereunder was valid and binding on the parties to the contract and on a person purporting to take an assignment of rights under the contract. Security Nat'l Bank v. GMC, 345 Mass. 434, 187 N.E.2d 820 (1963).

11. Consent provision; invalid.

UCC § 9-318(4) precludes and invalidates provision of college project subcontract requiring approval by general contractor of assignment by subcontractor. General Elec. Supply Co. v. Epco Constructors, Inc., 332 F. Supp. 112 (S.D. Tex. 1971).

A clause of a security agreement seeking to limit right to assign account or contract right to instance where there is approval by creditor is invalid under UCC § 9-318. General Elec. Supply Co. v. Epco Constructors, Inc., 332 F. Supp. 112 (S.D. Tex. 1971).

12. —Valid.

Provisions found in UCC §§ 2-210(2) and 9-318(4), nullifying effects of anti-assignment provisions, had no application to contract for installation of heating and air conditioning systems in apartment complex which contained clause prohibiting assignment of contract "or any part thereof" without written consent of other party, since contract was not one for sale of goods but was for services and labor with incidental furnishing of equipment and materials. Mingledorff's, Inc. v. Hicks, 133 Ga. App. 27, 209 S.E.2d 661 (1974).

RESEARCH REFERENCES

ALR. Constitutionality, construction and application of statute respecting sale, assignment or transfer of retail instalment contracts. 10 A.L.R.2d 447.

Validity of anti-assignment clause in contract. 37 A.L.R.2d 1251.

"Insecurity" acceleration or repossession clause as affecting question whether transferee of commercial paper given by purchaser of chattel and secured by conditional sale, retention of title, or chattel mortgage is subject to defenses which chattel purchaser could assert against seller. 44 A.L.R.2d 8.

Validity, in contract for installment sale of consumer goods, or commercial paper given in connection therewith, or provision waiving, as against assignee, defenses good against seller. 39 A.L.R.3d 518.

Construction and operation of UCC § 9-318(3) providing that account debtor is authorized to pay assignor until he receives notification to pay assignee. 100 A.L.R.3d 1218.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 18, 22, 46, 68, 69.

13 Am. Jur. 2d, Buildings and Construction Contracts § 100.

68A Am. Jur. 2d, Secured Transactions § 449 et seq.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:591-9:594, 9:601-9:603 (assignment of account).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2074 through 253:2100 (assignment by secured party).

CJS. 6A C.J.S., Assignments §§ 80, 81, 87-89.

79 C.J.S., Secured Transactions § 316.

78 C.J.S., Sales §§ 210, 212 et seq.

§ 75-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in Section 75-2A-303(7), a term described in subsection (a)(2) is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Section 75-2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

SOURCES: Former 1972 Code § 75-9-407 [Codes, 1942, § 41A:9-407; Laws, 1968, ch. 492, § 1; Laws, 1977, ch. 452, § 30; Laws, 1985, ch. 381, § 5, eff from and after July 1, 1985] is now found in comparable provisions enacted at § 75-9-523 by Laws, 2001, ch. 495, § 1. Present § 75-9-407 was derived from 1972 Code § 75-2A-303 [Laws, 1994, ch. 445, § 1, eff from and after July 1, 1994] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under Section 75-9-610 or an acceptance of collateral under Section 75-9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

SOURCES: Former 1972 Code § 75-9-408 [Laws, 1977, ch. 452, § 31, eff from and after April 1, 1978] is now found in comparable provisions enacted at § 75-9-505 by Laws, 2001, ch. 495, § 1. Present § 75-9-408 was enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 11, eff from and after July 1, 2013.

§ 75-9-409. Restrictions on assignment of letter-of-credit rights ineffective.

(a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

PART 5.

FILING.

Subpart 1. Filing Office; Contents and Effectiveness of Financing Statement 75-9-501
Subpart 2. Duties and Operation of Filing Office 75-9-519

Editor's Note — Many of the notes found under this part originated with the prior version of Chapter 9 which was revised in 2001. They have been moved to their current location at the direction of Codification Counsel. Some of the sections of the Uniform Commercial Code referenced in case notes under "Judicial Decisions" were current when the cases were decided but may have been revised or repealed since then. Cases decided under former law are clearly identified.

SUBPART 1.

FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

SEC.
75-9-501. Filing office.
75-9-501.1. Fraudulent or false filings; review of record presented for filing; refusal or termination of record; applicability.
75-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.
75-9-503. Name of debtor and secured party.
75-9-504. Indication of collateral.
75-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.
75-9-506. Effect of errors or omissions.
75-9-507. Effect of certain events on effectiveness of financing statement.
75-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.
75-9-509. Persons entitled to file a record.
75-9-510. Effectiveness of filed record.
75-9-511. Secured party of record.
75-9-512. Amendment of financing statement.
75-9-513. Termination statement.
75-9-514. Assignment of powers of secured party of record.
75-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.
75-9-516. What constitutes filing; effectiveness of filing.
75-9-517. Effect of indexing errors.
75-9-518. Claim concerning inaccurate or wrongfully filed record.

§ 75-9-501. Filing office.

(a) Except as otherwise provided in subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The Office of the Secretary of State in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

SOURCES: Former 1972 Code § 75-9-501 [Codes, 1942, § 41A:9-501; Laws, 1966, ch. 316, § 9-501; Laws, 1977, ch. 452, § 32, eff from and after April 1, 1978] is now found in comparable provisions enacted at §§ 75-9-601 through 75-9-604 by Laws, 2001, ch. 495, § 1. Present § 75-9-501 was derived from former 1972 Code § 75-9-401 [Codes, 1942, § 41A:9-401; Laws, 1966, ch. 316, § 9-401; Laws, 1968, ch. 489, § 1; Laws, 1977, ch. 452, § 24; Laws, 1982, ch. 439; Laws, 1984, ch. 454, § 1; Laws, 1995, ch. 329, § 1, eff from and after July 1, 1995] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Effect of this section on disposition of seized property under Uniform Controlled Substances Law, see § 41-29-177.

Procedure for forfeiture of property seized for violation of fish and game laws, see § 49-7-251 et seq.

Application of this section to a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Definitions, see § 75-9-102.

Scope of Article, see § 75-9-109.

Employer's lien on crops of sharecropper, see § 85-7-1.

Recording of deeds and conveyances, see §§ 89-5-1 to 89-5-5.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-401.

A. In General.

6. Generally; scope.
7. Necessity of filing.
8. —Motor vehicles.

B. Place of Filing.

9. In general.
10. Residence of debtor; farm goods, etc.
11. —Additional filing as to crops.
12. —Consumer goods.
13. Real property records.
14. Secretary of State.
15. —Dual filing.
16. —"Place of business."
17. —More than one place of business.
18. —"Residence" of business.
19. —Nonresidents.
20. —Fixtures not subject to subd. (1)(b).

C. Mistake as to Place of Filing.

21. In general.
22. Good faith.
23. Actual knowledge of financing statement.
24. —Knowledge of security agreement distinguished.
25. —Trustee in bankruptcy or the like.

26. Collateral as to which filing proper.

D. Change in Circumstances Controlling Filing.

27. In general.
28. Motor vehicles.

E. Decisions Under Former Statutes.

29. Decisions under former Code 1942 § 863.
30. Decisions under former Code 1942 § 870.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-401.

A. In General.

6. Generally; scope.

Financing statements which did not contain correct name of debtor but listed debtor only by tradename used by debtor for his business did not substantially comply with statutory requirement and were fatally defective. In re Thomas, 466 F.2d 51 (9th Cir. Cal. 1972).

UCC § 9-401 relates only to the priority of otherwise valid security interests and has no relation to the question of whether there was authority to create a security interest. Branch v. Steph, 389 F.2d 233 (10th Cir. Okla. 1968).

Federal law rather than state law would control an action based upon an alleged conversion by an auctioneer by sale at public auction of cattle against which the Farmers Home Administration had a recorded security agreement executed in its favor by the owner of the cattle. United States v. Sommerville, 324 F.2d 712 (3d Cir. Pa. 1963), cert. denied, 376 U.S. 909, 84 S. Ct. 663, 11 L. Ed. 2d 608 (1964).

The provisions of this section simply provide a system of notice of a reservation of title to purchasers, creditors, and others, but they do not affect any rights or obligations as between seller and buyer, and noncompliance with them does not, as between the parties, divest the seller's reserved title and vest it in the buyer. Rodi Boat Co. v. Provident Tradesmens Bank & Trust Co., 236 F. Supp. 935 (E.D. Pa. 1964), aff'd, 339 F.2d 259 (3d Cir. Pa. 1964).

Unperfected security interest is subordinate to rights of lien creditors or trustee in bankruptcy representing them. In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

In an action by a trustee in bankruptcy to recover for the estate assets taken over by holders of financing contracts, wherein the contract holders, who had filed financing statements pursuant to the Uniform Commercial Code, defended on the ground that they were secured creditors, mixed questions of fact and law being involved, the matter was too complex to permit solution on motion for a summary judgment, in whole or in part. Hurwitz v. Fidelity Am. Fin. Corp., 179 F. Supp. 550 (E.D. Pa. 1960).

Although signatures of debtors on financing statement appeared to be made in individual capacity rather than as corporate officers, financing statements established valid perfected security interest in bank since it was evident that corporation was in fact debtor on financing statements and ample notice was provided for those making good faith search of official records. Sherman v. Upton, Inc., 90 S.D. 467, 242 N.W.2d 666 (1976).

Liability between the parties is created by the execution of a security agreement or other instrument, but no personal liability is created by the execution of a financing statement. Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966).

7. Necessity of filing.

A lease agreement which provides the lessee, upon compliance with the terms of the lease, with an option to purchase the entire leased premises for a nominal consideration makes the lease one intended for security; in order to perfect a security interest in such an arrangement, appropriate financing statements must be filed. Peoples Bank & Trust Co. v. Applewhite (In re 20th Century Enters., Inc.), 152 B.R. 119 (Bankr. N.D. Miss. 1992).

In action by lender to establish security interest in mobile homes "floor-planned" for dealer, (1) where lender pursuant to written agreement advanced money to dealer in Arizona for inventory financing, agreement gave lender security interest in all of dealer's present and after-acquired inventory, and lender filed financing statement with Arizona Secretary of State; (2) where Alabama manufacturer thereafter orally sold 16 mobile homes to dealer but was not paid therefor, invoice accompanying such homes stated that title thereto could be transferred only through manufacturer's certificate of origin, and manufacturer retained all such certificates; (3) where manufacturer did not file financing statement evidencing its interest in such homes with Arizona Secretary of State; and (4) where Arizona motor-vehicle registration code, at time of sale of homes to dealer, exempted them from registration requirement while they were still owned by dealer or manufacturer, plaintiff lender (1) was not required to file financing statement and certificates of title to homes with Arizona motor-vehicle division in order that lender's lien could be indorsed on such certificates and lender's security interest in dealer's inventory could be perfected; (2) lender's security interest in homes was perfected merely by filing financing statement with Arizona Secretary of State pursuant to UCC § 9-302(1) and UCC § 9-401; (3) manufacturer, by retaining title to homes, merely reserved unperfected purchase-money security interest therein under UCC § 2-401; and (4) lender's perfected security interest in homes had priority over manufacturer's unperfected security interest therein under UCC § 9-301. GECC v. Tidwell Indus., Inc., 115 Ariz. 362, 565 P.2d 868 (1977).

8. —Motor vehicles.

In Missouri the filing provisions of this section have no application to motor vehicles and the perfection of liens thereon. In re Jackson, 268 F. Supp. 434 (E.D. Mo. 1967), aff'd, 385 F.2d 775 (8th Cir. Mo. 1967).

Filing requirements of Georgia Uniform Commercial Code are analogous to requirements for certificate-of-title applications under Georgia Motor Vehicle Certificate of Title Act, since both laws require filing of security interests to give notice to both future creditors of debtor and to potential buyers of collateral involved. Roberts v. International Harvester Credit Corp., 143 Ga. App. 206, 237 S.E.2d 697, 22 U.C.C. Rep. Serv. 1087 (1977).

The holder of a security interest, perfected by the proper filing of a chattel mortgage in the county in which an automobile was purchased and certificate of title was issued, and which remained a perfected interest under the provisions of subdivision 3 of this section as enacted in Wyoming for four months after the security was removed held a lien on the security superior to that of a judgment creditor who levied upon the automobile in the second county without knowledge or notice of the chattel mortgage, but did so before expiration of the four-month period following removal. Slates v. Commercial Credit Corp., 412 P.2d 444 (Wyo. 1966).

One engaged in lending money to an automobile dealer who takes a bill of sale, absolute on its face, for the sum of money loaned on a described automobile but fails to file a financing statement under the provisions of this section may lose his security interest either by sale of the automobile in the usual course of business or by the sale of the automobile by the dealer out of the course of business to a bona fide purchaser for value having neither actual nor constructive knowledge of such lien. Dunford v. Columbus Auto Auction, Inc., 114 Ga. App. 407, 151 S.E.2d 464 (1966).

A seller of truck tires on conditional sale, who failed to file notice of his security interest in the tires, could not assert such interest against a third person, the conditional seller of the truck to which the tires were attached whose security interest in the truck was perfected, and who retook the truck under this section. Ludlow Rubber Co. v. Mack Truck Sales, Inc., 38 Mass. App. Dec. 78 (1967).

B. Place of Filing.

9. In general.

While both the time of filing rule and the time of attachment rule have merit, neither rule furthers the important policy of providing notice to subsequent creditors of the prior existing security interest as well as a rule based upon the last event; by requiring that the determination of the proper place to file be made at the time when the last event occurs upon which the perfection of the creditor's security interest is based, the last event rule insures that the place in which the filing is made and the contents of the filing will reflect any changes made by the debtor between the time of attachment and the time of filing, regardless of which came first. The filer would be more likely to reflect the location and status of the debtor which exists at the time a subsequent creditor is searching the records to determine what prior security interests have been perfected against the debtor and therefore will be more likely to be found by such a subsequent creditor. Accordingly, the secured party must determine the correct place in which to file his financing statement on the basis of the facts existing at the time when the last event necessary for the perfection of his security interests occurs. Borg-Warner Acceptance Corp. v. Fedders Fin. Corp., 614 F.2d 399 (5th Cir. 1980).

Where (1) first creditor, after making motel construction loan to debtor, obtained security agreement with after-acquired property clause that applied to all after-acquired furniture, furnishings, appliances, and equipment used to operate motel, (2) first creditor filed financing statement in chancery clerk's office in county where motel was located, but allegedly did not file such statement with secretary of state, and (3) second creditor (bank) had knowledge of first creditor's financing statement, court held (1) that record, although not conclusive, was persuasive that financing statement had been filed by first creditor with secretary of state, as required by UCC § 9-401(1)(c), and (2) since second creditor knew about first creditor's financing statement, first creditor therefore, under express provisions of UCC § 9-401(2), had properly secured its interest in after-acquired personal property in debtor's motel. First Am. Nat'l Bank v. Alcorn, Inc., 361 So. 2d 481, 24 U.C.C. Rep. Serv. 1240 (Miss. 1978).

10. Residence of debtor; farm goods, etc.

In action to determine priority of right to farm equipment (collateral) as between bankruptcy trustee and assignee-creditor with allegedly perfected security interest, where (1) partnership-debtor bought farm equipment from seller on October 25, 1974, (2) seller filed financing statement in Tallahatchie County, Mississippi, instead of Sunflower County, Mississippi, where partnership's property was located, (3) seller subsequently assigned sale contract and security agreement to plaintiff assignee-creditor, and (4) debtor thereafter became bankrupt, court held (1) that partnership can be debtor because (1) UCC § 9-105(1)(d) defines debtor as "person" who owes payment of secured obligation, (b) "person" under UCC § 1-201(30) includes "organization," and (c) "organization" under UCC § 1-201(28) includes "partnership," (2) that debtor-partnership's residence under UCC § 9-401(6) was its place of business, which was in Sunflower County, Mississippi, and not Tallahatchie County, Mississippi, (3) that under UCC § 9-401(1)(a), plaintiff's financing statement should have been filed in county of debtor's residence (Sunflower County), and (4) that as a result, plaintiff's security interest was unperfected because it was filed in wrong county. Ford Motor Credit Co. v. Weaver, 680 F.2d 451 (6th Cir. Tenn. 1982).

Security interest need not be perfected under UCC in order to be protected against subsequent judgment lien under Section 6323(h)(1) of Federal Tax Lien Act and thus creditor's security interest in debtor's popcorn crop was not primed by federal tax lien merely because creditor failed to file financing statement in county where debtor resided as required by UCC § 9-401(1)(a). Dragstrem v. Obermeyer, 549 F.2d 20 (7th Cir. Ind. 1977).

11. —Additional filing as to crops.

Filing of financing statement relating to security interest in soybeans was properly made in county in which debtor resided and in which land on which soybeans were to be grown was situated, and such filing precluded claim that soybeans were purchased from debtor without knowledge or notice of security interest therein. United States v. Hughes, 340 F. Supp. 539 (N.D. Miss. 1972).

12. —Consumer goods.

A chattel mortgage of an automobile filed where the car was located and the mortgagor resided is valid as against mortgagor's trustee in bankruptcy even though instrument was not recorded in the locality to which mortgagor removed taking the chattel, both under existing statutes and the Commercial Code. In re Mohammed, 327 F.2d 616 (6th Cir. Mich. 1964).

13. Real property records.

County's recordation of lease purchase agreement in land records did not afford constructive notice of its security interest in leased equipment, and thus subsequent lienor whose interest was perfected had priority over county; recorded agreement did not mention equipment, recordation in land records was not effectively recordation in Mississippi Uniform Commercial Code records, and lienor had no notice of county's interest. Peoples Bank & Trust Co. v. Applewhite (In re 20th Century Enters., Inc.), 152 B.R. 119 (Bankr. N.D. Miss. 1992).

Where financing statement covering steel grain drying bin, which became fixture, was filed in office of county clerk but was not filed in office of registrar of deeds, UCC § 9-401 rendered filing ineffective against bank that subsequently took mortgage on property; under UCC § 9-313, security interest of seller of grain bin, not being properly filed, was not protected, bank's mortgage lien had priority, and purchasers at foreclosure sale acquired all property subject to mortgage, including bin. Tillotson v. Stephens, 195 Neb. 104, 237 N.W.2d 108 (1975), overruled on other grounds, First Nat'l Bank v. Rose, 213 Neb. 611, 330 N.W.2d 894 (1983).

A chattel mortgage covering fixtures must be filed in office of the town clerk where mortgages on real estate are to be filed, and if the chattel mortgage also included personal property it must be filed in the office of the Secretary of State. Cain v. Country Club Delicatessen of Saybrook, Inc., 25 Conn. Supp. 327, 203 A.2d 441 (1964).

14. Secretary of State.

In an action by a bank against the endorser of two promissory notes executed by the corporate maker of whom the endorser was secretary and treasurer, the trial court erred in failing to direct a verdict for the endorser where the bank neglected to file its security interest with the office of the secretary of state as required by § 75-9-401(c) even though the collateral agreement included all furniture, appliances and fixtures owned by the maker and where the bank thereby discharged the endorser by impairing the collateral as provided in § 75-3-606(1)(b). Huey v. Port Gibson Bank, 390 So. 2d 1005 (Miss. 1980).

Where (1) first creditor, after making motel construction loan to debtor, obtained security agreement with after-acquired property clause that applied to all after-acquired furniture, furnishings, appliances, and equipment used to operate motel, (2) first creditor filed financing statement in chancery clerk's office in county where motel was located, but allegedly did not file such statement with secretary of state, and (3) second creditor (bank) had knowledge of first creditor's financing statement, court held (1) that record, although not conclusive, was persuasive that financing statement had been filed by first creditor with secretary of state, as required by UCC § 9-401(1)(c), and (2) since second creditor knew about first creditor's financing statement, first creditor therefore, under express provisions of UCC § 9-401(2), had properly secured its interest in after-acquired personal property in debtor's motel. First Am. Nat'l Bank v. Alcorn, Inc., 361 So. 2d 481 (Miss. 1978) (also holding that since record did not show that second creditor had perfected purchase-money security interest within ten days, as required by UCC § 9-312(4) second creditor was not entitled to preference in debtor's collateral).

Although description of collateral contained in financing statement was standardized provision covering many irrelevant types of collateral, including "all inventory," phrase "all inventory" was sufficient to give other creditors notice that secured party had perfected security interest in not only inventory possessed by debtor at time of execution of security agreement but also inventory acquired thereafter until debt was paid. Thus, although subsequent creditor acquired purchase money security interest in debtor's inventory, subsequent creditor did not have priority of security interest in such inventory under UCC § 9-312 where prior secured party had prior perfected security interest in same inventory, and where subsequent creditor did not perfect its security interest in compliance with UCC § 9-401(1)(c) by filing financing statement in office of secretary of state. Borg-Warner Acceptance Corp. v. Wolfe City Nat'l Bank, 544 S.W.2d 947 (Tex. Civ. App. 1976).

Financing statement covering "accounts receivable" was properly filed with Office of Secretary of State of state where assignor of account and contract rights kept its records. Walker Bank & Trust Co. v. Smith, 88 Nev. 502, 501 P.2d 639 (1972).

Enforcement was properly denied to security agreement which was not filed in office of Secretary of State as required by UCC § 9-401(1)(c). Travelers Indem. Co. v. Clark, 254 So. 2d 741 (Miss. 1971).

Where financing statement covering security interest in contract rights was only filed with Clay County Register of Deeds and not with Secretary of State as required by UCC § 9-401(1)(c), security interest had no priority against subsequent lien of trustee in bankruptcy. City of Vermillion v. Stan Houston Equip. Co., 341 F. Supp. 707 (D.S.D. 1972).

15. —Dual filing.

Where (1) first creditor, after making motel construction loan to debtor, obtained security agreement with after-acquired property clause that applied to all after-acquired furniture, furnishings, appliances, and equipment used to operate motel, (2) first creditor filed financing statement in chancery clerk's office in county where motel was located, but allegedly did not file such statement with secretary of state, and (3) second creditor (bank) had knowledge of first creditor's financing statement, court held (1) that record, although not conclusive, was persuasive that financing statement had been filed by first creditor with secretary of state, as required by UCC § 9-401(1)(c), and (2) since second creditor knew about first creditor's financing statement, first creditor therefore, under express provisions of UCC § 9-401(2), had properly secured its interest in after-acquired personal property in debtor's motel. First Am. Nat'l Bank v. Alcorn, Inc., 361 So. 2d 481 (Miss. 1978) (also holding that since record did not show that second creditor had perfected purchase-money security interest within ten days, as required by UCC § 9-312(4) second creditor was not entitled to preference in debtor's collateral).

Where plaintiff creditor, after entering into financing agreement with debtor, filed financing statement with both secretary of state and clerk of city of Boston in reliance on address listed on debtor's stationery but did not file such statement with clerk of town of Brookline, which was debtor's sole place of business in state, as required by Massachusetts version of UCC § 9-401(1)(c), plaintiff was not entitled to be recognized as lien creditor with respect to assignees under subsequent assignment for benefit of debtor's creditors, even though plaintiff's filing mistake was understandable. Under Massachusetts version of UCC § 9-401(1)(c), plaintiff's filing in only one of two required places was not effective, except as to one with actual knowledge, and no contention was made that all creditors represented by assignees had actual knowledge of plaintiff's financing agreement with debtor. Uniroyal, Inc. v. Universal Tire & Auto Supply Co., 557 F.2d 22 (1st Cir. Mass. 1977).

In junior mortgagee's action for damages for defendant's alleged impairment of plaintiff's security, where defendant under security agreement with dealer in modular homes had security interest in all of dealer's present or future inventory and also first mortgage on 2.39 acres of land acquired by dealer for use as sales lot, on which dealer installed two modular homes; where plaintiff held second mortgage on dealer's 2.39 acres as security for loan on which dealer defaulted; and where defendant after dealer's default quickly removed modular homes from dealer's lot pursuant to written authorization from officer of dealer's company, (1) homes placed by dealer on sales lot, although installed on concrete foundations and connected to utilities, were inventory and not real property or fixtures under UCC § 9-109(4), since they were goods intended for immediate or ultimate sale; (2) defendant held perfected purchase-money security interest in dealer's inventory under UCC § 9-401(1)(c) and UCC § 9-402(1), which under UCC § 9-312(3) took priority over plaintiff's junior-mortgage interest; and (3) defendant on dealer's default had right to take possession of homes on dealer's lot, since they were inventory collateral. Rakosi v. GECC, 59 A.D.2d 553 (2d Dep't 1977).

Where financing statements filed with secretary of state alone and not filed locally did not protect security interest, lien creditor had priority over holder of security interests. Package Mach. Co. v. Cosden Oil & Chem. Co., 51 A.D.2d 771 (2d Dep't 1976).

Failure of assignee of present and future accounts receivable to file financing statement with secretary of state voided lien as against assignor's creditors, including assignee for benefit of creditors; filing only in city register's office in county in which assignor had its place of business was not enough to properly perfect security interest under UCC § 9-401(1)(c). In re National N.Y. Packing & Shipping Co., 82 Misc. 2d 1010 (1975).

Although bank, which filed financing statement in county clerk's office, failed to perfect its security interest by dual filing with Department of State as required by New York UCC, if subsequent creditor had all knowledge which it would have had if its officer had visited county clerk's office and read financing statement, under New York law it had actual notice of contents of financing statement. In re Davidoff, 351 F. Supp. 440 (S.D.N.Y. 1972).

It was incumbent upon secured party to show that it was entitled to its security by proving that it was filed in accordance with the requirements of UCC § 9-401(1)(c), and where secured party failed to so show, chancellor correctly denied enforcement of the security agreement. Travelers Indem. Co. v. Clark, 254 So. 2d 741 (Miss. 1971).

Neither shanty maintained in one county nor trailer maintained in second county and designed to move from job to job constituted "types of business" within Code provision requiring local filing of security interest in local notary's office if debtor has place of business in only one county; held, central filing of security interest in office of secretary of Commonwealth was not sufficient with respect to bankrupt who had only one place of business. In re Bethlehem Concrete Corp., 306 F. Supp. 1047 (E.D. Pa. 1969).

In Pennsylvania there must be a filing in both the office of the prothonotary for the county in which the debtor does business and in the office of the secretary of the Commonwealth. In re Smith, 205 F. Supp. 27 (E.D. Pa. 1962).

If central and local filing are both required, a local filing is not sufficient to cure the defect of failing to file in a central office. Filing in such a manner is not a mere irregularity and cannot be overlooked. In re Dumont-Airplane & Marine Instruments, Inc., 203 F. Supp. 511 (S.D.N.Y. 1962).

Where the debtor has its only place of business in one city in the Commonwealth, it is not enough that the financing statement is filed with the Secretary of State, but it must also, under subsection (1)(c) of the instant section, be filed with the city clerk of the city in which the debtor has a place of business. In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

In Pennsylvania, dual filing, locally and centrally, is required by the Code in order to perfect a security interest. In re Royer's Bakery, 55 Berks C.L.J. 164 (Pa).

16. —"Place of business."

In a bankruptcy proceeding, a creditor failed to perfect a security interest in equipment sold to a partnership, where it filed a financing statement in a county other than that in which the partnership had its residence and principal place of business as required by § 75-9-401, notwithstanding the fact that the partnership had a mailing address in the county in which the creditor filed the financing statement. Ford Motor Credit Co. v. Weaver, 680 F.2d 451 (6th Cir. Tenn. 1982).

Where creditor's secured interest did not become perfected until it gave value to the partnership and the partnership had rights in the collateral, and where neither event occurred until creditor delivered some of the merchandise financed under the security agreement to the partnership, and the first such delivery was made after the partnership had relocated its sole place of business in Jones County, the creditor's failure to file a financing statement in Jones County caused its security interest to be unperfected. Borg-Warner Acceptance Corp. v. Fedders Fin. Corp., 614 F.2d 399 (5th Cir. 1980).

Debtor's "place of business" for purpose of filing financing statement was Roanoke County where debtor purchased equipment for use in laundromat in his shopping center, where shopping center was located primarily in Roanoke County, although small part of it extended into City of Roanoke, where entire physical structure into which equipment was installed was in County and debtor was licensed and taxed by County, and where relationship of debtor's place of business to City was limited to circumstances that sign, phone booth and small portion of parking lot extended into City. In re Mauck, 378 F. Supp. 904 (W.D. Va. 1974).

"Principal place of business" where filing is required under UCC § 9-401 is county of factual principal place of business as distinguished from county designated in corporate certificate of incorporation. In re Carmichael Enters., Inc., 334 F. Supp. 94 (N.D. Ga. 1971), aff'd, 460 F.2d 1405 (5th Cir. Ga. 1972).

Use of "principal place of business" within UCC § 9-401(1)(b) means factual (court's emphasis) principal place of business, which was county where bankrupt maintained its only business operation rather than county stated in its charter as the site of its principal office. In re Carmichael Enters., Inc., 334 F. Supp. 94 (N.D. Ga. 1971), aff'd, 460 F.2d 1405 (5th Cir. Ga. 1972).

Use of phrase "chief place of business" in Maryland Reconstructed Code § 9-401(1) means county in which corporate debtor conducts its greatest volume of business activity, as distinguished from its place of principal office. Tatelbaum v. Commerce Inv. Co., 257 Md. 194, 262 A.2d 494 (1970).

Neither "shanty" nor "trailer" designed to move from job to job would be considered "place of business" within Code filing provision. In re Bethlehem Concrete Corp., 306 F. Supp. 1047 (E.D. Pa. 1969).

The proper place to file copies of instalment sale contracts for the purchase of equipment for a butcher business and a retail grocery store was in the office of the Secretary of the Commonwealth, and if all the debtors' places of business were in one county, in the office of the prothonotary of that county, under the Pennsylvania Uniform Commercial Code. In re Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957).

17. —More than one place of business.

In action between trustee in bankruptcy of contract knitting firm and creditors seeking to reclaim machinery, filing with secretary of state was sufficient to perfect security interest under UCC § 9-401(1)(c) as to those creditors whose security interests were created while debtor had place of business in more than one county in state; relative secrecy of one place of business was not fatal where its presence was known to those in trade. In re Mimshell Fabrics, Ltd., 491 F.2d 21 (2d Cir. N.Y. 1974).

18. —"Residence" of business.

Under Kentucky version of UCC § 9-401(1)(c), "residence" of resident Kentucky corporation, with regard to determining proper place for filing financing statement in order to perfect security interest in goods sold to such corporation, is location of corporation's "registered office" and not location of its "principal place of business." Moreover, since statute intended distinction between places of filing for resident and nonresident debtors, "residence" and "principal place of business," as used in statute, are not synonymous terms. NCR v. K.W.C., Inc., 432 F. Supp. 82 (E.D. Ky. 1977).

19. —Nonresidents.

Government's perfected tax lien had priority over bank's security interest in funds due taxpayer on construction project where bank failed to perfect its security interest by filing financing statement with secretary of state of taxpayer's home state, as well as with county in which taxpayer had its place of business, as required by UCC § 9-401(1), and where government did not have notice or knowledge of bank's interest in property. United States v. Ed Lusk Constr. Co., 504 F.2d 328 (10th Cir. Okla. 1974).

Where debtor was not a resident of Wyoming and where there was no evidence that secured party had filed a security agreement and financing statement with Secretary of State of State of Wyoming, Wyoming security agreement and financing statement were not perfected and were not superior to rights of innocent purchasers. Utah Farm Prod. Credit Ass'n v. Dinner, 302 F. Supp. 897 (D. Colo. 1969).

20. —Fixtures not subject to subd. (1)(b).

A "trade fixture" was held to be "equipment" and not a "fixture" and thus a filing with the Secretary of State was required to perfect a security interest therein under UCC § 9-401, and where Secretary of State filing followed bankruptcy petition, even though local filing had preceded petition, trustee in bankruptcy had right to sell trade fixture free of lien of secured party. In re Factory Homes Corp., 333 F. Supp. 126 (W.D. Ark. 1971).

Applying the New Jersey rule, the court held that a machine used in the manufacture of corrugated boxes, neither attached to the building in which it was located, nor intended to be so attached, was not a fixture, and the holder of the interest could not prevail in a reclamation proceeding against the purchaser's trustee in bankruptcy when the security interest had not been recorded in the office of the Secretary of State. In re Park Corrugated Box Corp., 249 F. Supp. 56 (D.N.J. 1966).

Under New Jersey law a "trade fixture" is not a fixture within the meaning of subsection (1)(b) so as to relieve the holder of a security interest therein from the requirement that his interest be recorded in the office of the Secretary of State. In re Park Corrugated Box Corp., 249 F. Supp. 56 (D.N.J. 1966).

C. Mistake as to Place of Filing.

21. In general.

Creditor who received as collateral for loan an assignment of and first lien on bankrupt debtor's liquor license, and who filed financing statement respecting such lien and assignment with State Division of Beverage but not with secretary of state as required by Florida version of UCC § 9-401(1)(c), did not have perfected security interest in debtor's liquor license within meaning of UCC § 9-401(2) that was superior to interest in such license of trustee in bankruptcy because (1) UCC § 9-401(2) does not protect creditor who in good faith makes totally improper filing, and (2) trustee had no notice of contents of creditor's improperly filed financing statement. In re Coed Shop, Inc., 435 F. Supp. 472 (N.D. Fla. 1977), aff'd, 567 F.2d 1367 (5th Cir. Fla. 1978).

Lien creditor's claim to proceeds of notes, which were pledged to secured party, took precedence over secured party's claim to such proceeds where financing statement covering such proceeds was filed in wrong place. Meadows v. Bierschwale, 516 S.W.2d 125 (Tex. 1974).

If central and local filing are both required, a local filing is not sufficient to cure the defect of failing to file in a central office. Filing in such a manner is not a mere irregularity and cannot be overlooked. In re Dumont-Airplane & Marine Instruments, Inc., 203 F. Supp. 511 (S.D.N.Y. 1962).

Under § 9-303(1) of the instant chapter, providing that a security interest is perfected when it has attached and when all the applicable steps required for perfection have been taken, a lien is not perfected where one of the applicable steps such as filing with the city clerk as required by subsection (1)(c) of the instant section has not been taken; nor does subsection (2) of the instant section purport to give a creditor a perfected lien, the effect of the latter subsection being only to make the lien effective against persons having actual knowledge of the contents of the financing statement. In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

The rights of a seller of equipment for use in a butcher business and a retail grocery store were subordinate to those of the buyers' trustee in bankruptcy where copies of the contracts were not filed in the office of the Secretary of the Commonwealth until after the adjudication in bankruptcy, even though they had previously been filed in the office of the prothonotary of the county wherein the buyers conducted their business, because the notice effected by the filing in the prothonotary's office was not equivalent to knowledge of the filing under this section. In re Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957).

22. Good faith.

Under UCC § 9-401(2), bank's improperly filed financing statement covering debtor's inventory rendered bank's security interest in inventory inferior to properly perfected security interest in such inventory of franchisor of debtor's business, despite bank's good faith in making its improper filing, where franchisor at time of perfecting its security interest in debtor's inventory did not have actual knowledge, or any reason to have actual knowledge, of either contents of bank's financing statement or fact that bank had filed such statement. First State Bank v. United Dollar Stores, 571 P.2d 444 (Okla. 1977).

Harvesting combines were "equipment used in farming operations", even though purchaser was not farmer but "custom harvester"; therefore trustee in bankruptcy was entitled to prevail of combine seller who had failed to record security interest in office of county recorder, despite fact that good faith filing had been made by seller in office of Secretary of State, in absence of proof that trustee in bankruptcy or perhaps all of unsecured creditors had actual knowledge of contents of financing statement. Sequoia Mach., Inc. v. Jarrett, 410 F.2d 1116 (9th Cir. Cal. 1969).

The phrase "in good faith" appearing in subsection (2) is descriptive and not mandatory, and affirmative proof is not required of the holder of a security interest. In re Komfo Prods. Corp., 247 F. Supp. 229 (E.D. Pa. 1965).

23. Actual knowledge of financing statement.

Where (1) first creditor, after making motel construction loan to debtor, obtained security agreement with after-acquired property clause that applied to all after-acquired furniture, furnishings, appliances, and equipment used to operate motel, (2) first creditor filed financing statement in chancery clerk's office in county where motel was located, but allegedly did not file such statement with secretary of state, and (3) second creditor (bank) had knowledge of first creditor's financing statement, court held (1) that record, although not conclusive, was persuasive that financing statement had been filed by first creditor with secretary of state, as required by UCC § 9-401(1)(c), and (2) since second creditor knew about first creditor's financing statement, first creditor therefore, under express provisions of UCC § 9-401(2), had properly secured its interest in after-acquired personal property in debtor's motel. First Am. Nat'l Bank v. Alcorn, Inc., 361 So. 2d 481 (Miss. 1978) (also holding that since record did not show that second creditor had perfected purchase-money security interest within ten days, as required by UCC § 9-312(4) second creditor was not entitled to preference in debtor's collateral).

Where (1) automobile dealer obtained Small Business Administration loan from plaintiff bank and executed security agreement in bank's favor covering dealer's shop equipment, furniture, fixtures, accounts receivable, and inventory, except new cars, (2) bank filed financing statement on November 26, 1974 in county chancery clerk's office but not with office of secretary of state, (3) dealer on February 20, 1975 granted security interest in same collateral to defendant credit corporation to cover dealer's indebtedness for new cars, and such security interest was properly perfected, (4) at time defendant's branch manager removed collateral from dealer's premises, dealer informed him that collateral was subject to bank's security interest, and (5) branch manager did not check records in county chancery clerk's office to determine whether bank's financing statement covering such collateral had been filed, court held that information given by dealer to defendant's branch manager constituted knowledge of contents of bank's financing statement within meaning of UCC § 9-401(2), so as to perfect bank's security interest in collateral and render it superior to that of defendant. Chrysler Credit Corp. v. Bank of Wiggins, 358 So. 2d 714 (Miss. 1978) (also holding that since defendant failed to prove in accordance with UCC § 9-306(2) that four of dealer's used cars had been purchased with proceeds of new-car sales, such used cars were part of inventory covered by bank's security interest).

"Knowledge" as used in UCC § 9-401(2) means "actual knowledge" or "reason to have actual knowledge," and not constructive knowledge in any broader sense. First State Bank v. United Dollar Stores, 571 P.2d 444 (Okla. 1977).

Subsequent creditor had actual knowledge under UCC §§ 9-401(2) and 1-201(25) of contents of improperly filed financing statement, and thus financing was effective against subsequent creditor, where subsequent creditor was aware at time that debtor came to it for loan that, except for about $13,000, all of debtor's $160,000 net worth was pledged for two prior bank loans and that pledge covered debtor's equipment. Enark Indus., Inc. v. Bush, 86 Misc. 2d 985 (1976).

Where it appeared that party claiming security interest had all the knowledge which it would have had if it had visited the clerk's office and read the financing statement, it had actual notice under New York law despite fact that there was a defect in the filing of the statement. In re Davidoff, 351 F. Supp. 440 (S.D.N.Y. 1972).

If all creditors represented by debtor's assignee for the benefit of creditors had knowledge of the contents of an inadequately filed financing statement at the time the assignment was made, reclaimant holding the security interest would have a claim superior to that of the assignee and the debtor's trustee in bankruptcy, but actual knowledge on the part of the creditors is a question of fact on which reclaimant would have the burden of proof before the referee. In re Komfo Prods. Corp., 247 F. Supp. 229 (E.D. Pa. 1965).

Subsection (2) of the instant section makes a lien effective as to persons having actual knowledge of the financing statement, despite a failure to make a proper filing of the statement, but it does not make the improper filing effective as to any one not having such knowledge, nor does it make the lien a perfected lien. In re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

24. —Knowledge of security agreement distinguished.

Knowledge by an insurance company that had perfected its security interest in its rights to a contractor's account receivables that an insurer had also received an assignment from the same contractor to a particular payment from a construction contract was not relevant to the determination of who had a priority as knowledge by the insurance company was only relevant if the insurer had filed a financing statement, which it had not. St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank, 882 So. 2d 766 (Miss. 2004).

Security interest of creditor which was properly filed and perfected prior to time security interest of second creditor in same collateral (appliances) was either properly filed or perfected had priority under UCC § 9-312(5)(a), and such priority was not affected by first creditor's alleged knowledge of contents of second creditor's security agreement with debtor based on receipt of partial copy of such agreement, since under UCC § 9-401(2) knowledge of contents of a creditor's improperly filed financing statement-and not knowledge of such creditor's security agreement with his debtor-is what is necessary to render effective a good-faith but improperly filed financing statement. In re County Green Ltd. Partnership, 438 F. Supp. 693 (W.D. Va. 1977).

UCC § 9-401(2) requires knowledge of contents of the improperly filed financing statement-not knowledge of contents of creditor's security agreement with debtor. Furthermore, under UCC § 1-201(25)(a), such knowledge must be actual knowledge. In re County Green Ltd. Partnership, 438 F. Supp. 693 (W.D. Va. 1977).

Secured creditor's lien was not entitled to priority over federal tax lien where financing statement was filed with county recorder instead of secretary of state as required by UCC § 9-401; although government had actual knowledge of security interest sufficient to give plaintiff priority under UCC § 9-301, federal test to determine existence of security interest was not met. Fred Kraus & Sons v. United States, 369 F. Supp. 1089 (N.D. Ind. 1974), aff'd, 506 F.2d 1404 (7th Cir. Ind. 1974).

Where there is a close relationship between a corporate debtor and the partnership to which the business is thereafter transferred, and both enterprises have a common dominant officer, knowledge of the security interest will be imputed to the successor enterprise so that the security interest is valid both as against the debtor and as against the successor enterprise, even though there has not been a proper filing because the filing was made in the office of the land records of the county. United States v. Thompson, 272 F. Supp. 774 (E.D. Ark. 1967), aff'd, 408 F.2d 1075 (8th Cir. Ark. 1969).

25. —Trustee in bankruptcy or the like.

In action to determine right to proceeds derived from sheriff's sale between secured party and State to whom delinquent sales taxes were owed, financing statement improperly filed with recorder of deeds was effective against State where sales tax representative of Department of Revenue had checked recorder of deeds' records and knew of financing statement and secured party's lien was therefore superior to State's subsequently filed sales tax lien. State v. Kerr, 509 S.W.2d 61 (Mo. 1974).

An assignee for benefit of creditors stands in the position of a lien creditor by operation of law at the time of the assignment and is not charged with knowledge of the existence of an alleged prior security interest which has not been perfected because it was filed in a wrong office. In re Worldwide Handbag Co., 4 U.C.C. Rep. Serv. 608 (1967, NY Sup).

26. Collateral as to which filing proper.

If security interest covers several types of collateral requiring different filing procedures, security interest would be perfected with respect to collateral against which filing is proper, but unperfected as against collateral which required another place of filing. Failure to file with Secretary of State and recording of chattel mortgage in county was not sufficient to perfect security interest in chattel mortgage. In re Dean Monagin, Inc., 18 Mich. App. 171, 170 N.W.2d 924 (1969).

D. Change in Circumstances Controlling Filing.

27. In general.

Proper place of filing was controlled by circumstances existing at time of last act necessary for perfection; thus, where appliance manufacturer filed in one county prior to debtor business moving to another county, and manufacturer subsequently delivered goods to debtor in second county, filing in first county was ineffective to perfect manufacturer's security interest in goods. Borg-Warner Acceptance Corp. v. Fedders Fin. Corp., 614 F.2d 399 (5th Cir. 1980).

Where creditor's secured interest did not become perfected until it gave value to the partnership and the partnership had rights in the collateral, and where neither event occurred until creditor delivered some of the merchandise financed under the security agreement to the partnership, and the first such delivery was made after the partnership had relocated its sole place of business in Jones County, the creditor's failure to file a financing statement in Jones County caused its security interest to be unperfected. Borg-Warner Acceptance Corp. v. Fedders Fin. Corp., 614 F.2d 399 (5th Cir. 1980).

While both the time of filing rule and the time of attachment rule have merit, neither rule furthers the important policy of providing notice to subsequent creditors of the prior existing security interest as well as a rule based upon the last event; by requiring that the determination of the proper place to file be made at the time when the last event occurs upon which the perfection of the creditor's security interest is based, the last event rule insures that the place in which the filing is made and the contents of the filing will reflect any changes made by the debtor between the time of attachment and the time of filing, regardless of which came first. The filer would be more likely to reflect the location and status of the debtor which exists at the time a subsequent creditor is searching the records to determine what prior security interests have been perfected against the debtor and therefore will be more likely to be found by such a subsequent creditor. Accordingly, the secured party must determine the correct place in which to file his financing statement on the basis of the facts existing at the time when the last event necessary for the perfection of his security interests occurs. Borg-Warner Acceptance Corp. v. Fedders Fin. Corp., 614 F.2d 399 (5th Cir. 1980).

Where financing statement was properly filed in 1970 under Maryland version of UCC § 9-401(1) with clerk of circuit court in order to perfect lender's security interest in truck dealer's new and used trucks to be purchased for inventory, and where such statute was amended by Maryland legislature in 1971 to require filing of certain financing statements with Department of Assessments and Taxation, but amendment expressly preserved effectiveness of financing statements filed prior to amendment, fact that lender in 1973 filed ineffective financing statement with clerk of circuit court instead of Department of Assessments and Taxation did not adversely affect prior perfection of lender's security interest. Frankel v. Associates Fin. Servs. Co., 281 Md. 172, 377 A.2d 1166 (1977).

Where debtor was corporation that operated retail clothing store, where secured party acquired perfected purchase money security interest in debtor's inventory including its proceeds and after-acquired property, where debtor corporation merged with other corporations, each operating retail clothing outlets, and, finally, where surviving corporation entered into assignment for benefit of creditors: (1) secured party had valid security interest in after-acquired inventory of debtor, notwithstanding that at time of assignment for benefit of creditors surviving corporation did not have in its possession any inventory purchased from secured party by surviving corporation for any of its constituent corporations; (2) after-acquired property clause extended to property acquired by surviving corporation after merger; and (3) financing statement on file at time of assignment for benefit of creditors was not deficient though it did not contain name of debtor-assignor. However, secured party did not have security interest in the proceeds of inventory from other stores not covered by security agreement. Inter Mt. Ass'n of Credit Men v. Villager, Inc., 527 P.2d 664 (Utah 1974).

Where debtor moved inventory subject to security interest from one store to another, security interest's perfected status remained intact without necessity of refiling. Owen v. McKesson & Robbins Drug Co., 349 F. Supp. 1327 (N.D. Fla. 1972), aff'd, 486 F.2d 1401 (5th Cir. Fla. 1973).

28. Motor vehicles.

Where (1) debtors, at time security interest attached to mobile home purchased from creditor, were actually living in Fulton County, New York, (2) debtors, before August 6, 1973, moved to Herkimer County, New York, where home had been delivered and installed on its site, (3) on August 6, 1973, bank which was secured creditor's assignee filed financing statement in Fulton County, (4) debtors filed petition in bankruptcy, and (5) bank reassigned its interest in security agreement to plaintiff which repossessed home, plaintiff had secured-creditor status as against debtor's general creditors because (1) under UCC § 9-401(1)(a), proper place for filing financing statement covering consumer goods was county of debtor's actual residence at time security interest attached, and (2) after plaintiff's security interest had been perfected by filing in proper place, under UCC § 9-401(3), it remained effective, regardless of number of times or places debtors or collateral might thereafter move. In re Knapp (C.A.2 (N.Y.) 1978) 575 F2d 341, 23 UCCRS 1354 (applying New York law; rejecting contention of bankruptcy trustee that county of debtors' residence at time financing statement was filed should control plaintiff's status as secured creditor)

A local statute may require that a buyer of a car titled in another state make inquiries of a designated official in such originating state and if the buyer fails to comply with such statute he cannot claim the status of an innocent purchaser so as to destroy a foreign security interest in the collateral but instead he takes the title subject to such outstanding security interest. Gelfo v. GMAC, 206 So. 2d 247 (Fla. App. 1968), but see Northside Motors v. GMAC, 255 So. 2d 560 (Fla. Ct. App. 1971).

The holder of a security interest, perfected by the proper filing of a chattel mortgage in the county in which an automobile was purchased and certificate of title was issued, and which remained a perfected interest under the provisions of subdivision 3 of this section as enacted in Wyoming for four months after the security was removed held a lien on the security superior to that of a judgment creditor who levied upon the automobile in the second county without knowledge or notice of the chattel mortgage, but did so before expiration of the four-month period following removal. Slates v. Commercial Credit Corp., 412 P.2d 444 (Wyo. 1966).

A chattel mortgage of an automobile filed where the car was located and the mortgagor resided is valid as against mortgagor's trustee in bankruptcy even though instrument was not recorded in the locality to which mortgagor removed taking the chattel, both under existing statutes and the Commercial Code. In re Mohammed, 327 F.2d 616 (6th Cir. Mich. 1964).

E. Decisions Under Former Statutes.

29. Decisions under former Code 1942 § 863.

Where a mobile homes dealer entered into a conditional sales transaction wherein he sold a mobile home to himself, executing a dealer's assignment of the contract to a financing company, and subsequently sold the same mobile home to an individual buyer, representing to the buyer that the mobile home was free of all liens and encumbrances, the buyer was an innocent purchaser for value and his purchase was not subject to the prior recorded conditional sales contract. G.A.C. Trans-World Acceptance Corp. v. Migrothy, 230 So. 2d 577 (Miss. 1970).

Mortgagee not required to record mortgage in county to which mortgaged property removed without consent. Cole-McIntyre-Norfleet Co. v. Du Bard, 135 Miss. 20, 99 So. 474 (1924).

Deed of trust on personal property immediately taken to county of buyer's residence not constructive notice to subsequent purchaser for value unless recorded in such county. McLarty v. Ashmore, 128 Miss. 735, 91 So. 421 (1922).

Purchaser of property covered by deed of trust which referred to notes secured thereby, chargeable with notice that notes provided for attorney's fees. Turberville v. Simpson, 94 Miss. 154, 47 So. 784 (1908).

This section [Code 1942, § 863] does not apply in favor of a purchaser who acquired title in a county where the instrument was recorded, although the property was delivered to him in another county, where it remained for more than twelve months before the instrument was there recorded. Ladd v. Alcorn, 71 Miss. 395, 14 So. 266 (1893).

Permission before the expiration of twelve months does not defeat the lien. Elson v. Barrier, 56 Miss. 394 (1879).

The statute does not apply unless the removal of the property be by the consent, permission or participation of the person claiming title. Bogard v. Gardley, 12 Miss. (4 S. & M.) 302 (1845).

This statute applies to marriage contracts. Moss v. Davidson, 9 Miss. (1 S. & M.) 112 (1843); Pickett v. Banks, 19 Miss. (11 S. & M.) 445 (1848).

30. Decisions under former Code 1942 § 870.

In a bankruptcy proceeding, a creditor failed to perfect a security interest in equipment sold to a partnership, where it filed a financing statement in a county other than that in which the partnership had its residence and principal place of business as required by § 75-9-401, notwithstanding the fact that the partnership had a mailing address in the county in which the creditor filed the financing statement. Ford Motor Credit Co. v. Weaver, 680 F.2d 451 (6th Cir. Tenn. 1982).

Where at the time of their purchase in Tennessee the laws of that state did not require the recordation of conditional sales contracts, the lien of the conditional vendor was superior to that of an attaching creditor in Mississippi when the vehicles were only transitorily in the latter state. Clark Equip. Co. v. Poultry Packers, Inc., 254 Miss. 589, 181 So. 2d 908 (1966).

Where Tennessee would construe a conditional sales contract for the sale of a motor vehicle executed in that state as being essentially a lien which must be recorded, the conditional sales contract upon a motor vehicle removed to Mississippi must come within the grouping of "other liens on personal property executed out of this state" as that phrase is used in this section [Code 1942, § 870]. Memphis Bank & Trust Co. v. Blount, 252 Miss. 289, 172 So. 2d 778 (1965).

The rights of the mortgagee of an automobile involved in a collision to the insurance thereon, under a mortgage clause in the policy, are superior to an attachment in an action for damages caused by the collision, though not filed in the state in which the automobile was attached. Associates Disct. Corp. v. Clark, 240 Miss. 723, 128 So. 2d 535 (1961).

Where an automobile was sold in Tennessee under a conditional sales contract which was assigned to a finance company and where later the buyer sold the car to a Mississippi corporation which in turn sold the car to an innocent purchaser for value, the finance company was entitled to recover the automobile in an action of replevin after there had been a default in the payment under the conditional sales contract, even though the contract was not recorded, since a conditional sales contract is not required to be recorded under the law of Tennessee. Mid-Continent Fin. Corp. v. Grant, 213 Miss. 789, 58 So. 2d 1 (1952).

In replevin by trustee of deed of trust executed in Louisiana on two demilitarized army tanks against purchaser buying tanks before recording of deed of trust in Mississippi, evidence warranted directed verdict in favor of purchaser as bona fide purchaser without notice of prior unrecorded foreign deed of trust covering tanks. Oubre v. Skrmetti, 204 Miss. 542, 37 So. 2d 763 (1948).

Question whether Alabama conditional sales contract constitutes lien on automobile sold and delivered in Alabama as security for unpaid purchase price so as to come within the recording requirement of this section [Code 1942, § 870] is governed by the laws of Alabama. Patterson v. Universal C.I.T. Credit Corp., 204 Miss. 268, 37 So. 2d 306 (1948).

Conditional sales contract covering sale of automobile in Alabama for use in Mississippi, under which seller retained title until unpaid balance of purchase price was paid, being a lien on automobile under Alabama law, must be recorded in Mississippi in order to protect rights of holder of conditional sales contract, against an innocent purchaser for value in this state. Patterson v. Universal C.I.T. Credit Corp., 204 Miss. 268, 37 So. 2d 306 (1948).

Re-recording under this section [Code 1942, § 870] of purchase money mortgages on motor vehicles, recorded outside of the state, is not required as to motor vehicles temporarily or transitorily in state on business errand. Russum v. Gans, 190 Miss. 584, 1 So. 2d 235 (1941).

Where a motor truck mortgage is recorded in one state, occasional trips across the state line to a neighboring town in another state, on business errands, does not constitute removal to such other state requiring recording of the mortgage there within the purview of this section [Code 1942, § 870]. Russum v. Gans, 190 Miss. 584, 1 So. 2d 235 (1941).

Agreed statement of facts, construed to mean car had been "removed into this state" within statute as to priority between foreign chattel mortgages and local attachments. Vines v. Sparks, 148 Miss. 219, 114 So. 322 (1927).

Creditor without notice, attaching in state car removed there after mortgage in other state, recorded there only, held to have superior rights. Vines v. Sparks, 148 Miss. 219, 114 So. 322 (1927).

RESEARCH REFERENCES

ALR. Construction and application of statutory provision respecting registration of mortgages or other liens on personal property in case of residents of other states. 10 A.L.R.2d 764.

Necessity of recording or filing chattel mortgage in state to which property is removed. 13 A.L.R.2d 1318.

Attorney's liability for negligence in preparing or recording security document. 87 A.L.R.2d 991.

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws § 55.

68A Am. Jur. 2d, Secured Transactions §§ 302-304.

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:414 (collateral as fixture; priority of real estate mortgage over security interest not filed in real estate mortgage records).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:611, 9:613-9:620

(place; erroneous filing).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:153-9:155 (instructions to jury; proper filing as perfecting security interest between parties).

CJS. 76 C.J.S., Records § 6.

Law Reviews. 1984 Mississippi Supreme Court Review: Property.

The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 75-9-501.1. Fraudulent or false filings; review of record presented for filing; refusal or termination of record; applicability.

(a) No person shall cause to be communicated to the filing office for filing a false record the person knows or reasonably should know:

(1) Is filed with the intent to harass or defraud the person identified as debtor in the record or any other person;

(2) Is not authorized or permitted under Section 75-9-509, 75-9-708 or 75-9-808 of this article; or

(3) Is not related to a valid existing or potential commercial or financial transaction, an existing agricultural or other lien, or a judgment of a court of competent jurisdiction.

(b) The Secretary of State may initiate a review of a record presented for filing or a filed record if:

(1) The Secretary of State receives an information statement filed by the debtor with the Secretary of State under Section 75-9-518 alleging the record was communicated to the filing office in violation of subsection (a); or

(2) The Secretary of State has reason to believe, from information contained in the record or obtained from the person that communicated the record to the filing office, that the record was communicated to the filing office in violation of subsection (a).

(c) Upon initiating the review, the Secretary of State shall communicate to the secured party of record on the record to which the review relates and to the person that communicated the record to the filing, if different and known to the office, a request for additional documentation supporting the effectiveness of the record. The Secretary of State may terminate the record effective thirty (30) days after the first request for additional documentation is sent if it has a reasonable basis for concluding that the record was communicated to the filing office in violation of subsection (a). The Secretary of State may give heightened scrutiny to a record when:

(1) The record asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction;

(2) The record indicates that the debtor and the secured party are substantially the same;

(3) The debtor is a transmitting utility; or

(4) The transaction to which the record relates is a public-finance transaction.

(d) The Secretary of State shall not return any fee paid for filing a record refused or terminated under this section.

(e) The Secretary of State shall promptly communicate to the secured party of record a notice of the refusal or termination of a record under subsection (c). A secured party of record that believes in good faith the record was not communicated to the filing office in violation of subsection (a) may commence an action in the Chancery Court of the First Judicial District of Hinds County, Mississippi, to require the Secretary of State to accept or reinstate the record.

(f) A record ordered by the court to be accepted or reinstated is effective as a filed record from the initial filing date except as against a purchaser of the collateral which gives value in reasonable reliance on the absence of the record from the files.

(g) Neither the filing office nor any of its employees shall incur liability for the termination or failure to terminate a record under this section or for the refusal to accept a record for filing in the lawful performance of the duties of the office or employee.

(h) This section does not apply to a record communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution except that the Secretary of State may request from the secured party of record on the record or from the person that communicated the record to the filing office, if different and known to the office, additional documentation supporting that the record was communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution. "Regulated financial institution" means a financial institution subject to regulatory oversight or examination by a state or federal agency, including, but not limited to, any bank, commercial finance lender or insurer, consumer loan broker, credit union, debt management service provider, finance company, industrial loan company, insurance premium finance company, investment company, investment fund, mortgage service provider, savings association, small loan company, and trust company.

(i) This section applies to records communicated to the filing office for filing before July 1, 2013, if the communication constitutes a violation of subsection (a).

SOURCES: Laws, 2013, ch. 382, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (a)(2) by substituting "Section 75-9-509, 75-9-708 or 75-9-808" for "Sections 75-9-509, 75-9-708 or 75-9-808." The Joint Committee ratified the correction at its August 5, 2016, meeting.

§ 75-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 75-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section, but:

(A) The record need not indicate that it is to be filed in the real property records; and

(B) The record sufficiently provides the name of the debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 75-9-503(a)(4) applies; and

(4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

SOURCES: Former 1972 Code § 75-9-502 [Codes, 1942, § 41A:9-502, eff from and after April 1, 1978] is now found in comparable provisions enacted at §§ 75-9-607 and 75-9-608 by Laws, 2001, ch. 495, § 1. Present § 75-9-502 was derived from former 1972 Code § 75-9-402 [Codes, 1942, § 41A:9-402; Laws, 1966, ch. 316, § 9-402; Laws, 1968, ch. 490, § 1; Laws, 1977, ch. 452, § 25, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 1966, ch. 316, § 9-502; Laws, 1977, ch. 452, § 33; Laws, 2013, ch. 451, § 12, eff from and after July 1, 2013.

Cross References — Applicability of requirements of this section to "fixture filings", see § 75-9-313.

Continuance of effectiveness of filing notwithstanding change of debtor's residence or location of collateral, see § 75-9-401(3).

Filing of financing statement, see § 75-9-403.

Assignment of security interest, see § 75-9-405.

JUDICIAL DECISIONS

I. Under Current Law.

1. [Reserved for future use.]
2. Use of other than debtor's legal name.
3. After-aquired property.

4.-5. [Reserved for future use.]

II. Under Former § 75-9-402(1), (5), (6).

6. In general; scope.
7. Purpose.
8. Sufficiency of financing statement, generally.
9. Misspelling of debtor's name.
10. Misstatement of debtor's corporate or trade name.
11. Use of debtor's trade name only.
12. Misidentification of secured party.
13. Failure to identify owner of collateral.
14. Effect of debtor's change of name or corporate structure.
15. Signatures of parties, generally.
16. Signatures; particular applications.
17. —Signature of secured party.
18. —Signature of debtor.
19. —Signatures on behalf of corporate or partnership parties.
20. —Requirement of manual signature.
21. Addresses of parties, generally.
22. Addresses; particular applications.
23. —Effect of change of address.
24. Description of collateral, generally.
25. Description; particular applications.
26. —After-acquired property.
27. —Accounts receivable.
28. —Accuracy of description of single item of collateral.
29. —Crops.
30. —General terms of description.
31. —General terms of description; "consumer goods."
32. —General terms of description; "equipment."
33. —General terms of description; "personal property."
34. —Inventory.
35. Minor errors.
36. Security agreement as financing statement.
37. Relationship between financing statement and security agreement.
38. Effect of refinancing.
39. Amendment or continuation of security agreement.
40. Assignment of security interest of priority.
41. Transfer of collateral by debtor.

I. Under Current Law.

1. [Reserved for future use.]

2. Use of other than debtor's legal name.

Even though defendant bank's financing statement used the individual debtor's nickname, not his legal name, the financing statement was not seriously misleading because plaintiff bank had actual knowledge that the individual was known by the nickname used in the financing statement, and the individual was identified by both names in numerous places in plaintiff bank's own files. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549 (5th Cir. 2007).

3. After-aquired property.

Bank's security agreement included after-acquired property because debtor dealt in farm products, and it would have been unreasonable to assume that the bank would have intended to acquire a security interest only in debtor's property as of the date the agreement was entered. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549 (5th Cir. 2007).

4.-5. [Reserved for future use.]

II. Under Former § 75-9-402(1), (5), (6).

6. In general; scope.

In action by one secured party to replevy common debtor's inventory collateral from defendant second secured party, where (1) defendant's security agreement was executed on June 9, 1975, and defendant thereunder immediately took possession of debtor's inventory collateral, which consisted of automobile parts and accessories, (2) plaintiff previously, on December 15, 1972, had filed financing statement, in which it listed itself as creditor and same person as debtor, which provided that such statement covered debtor's inventory of automobile parts and accessories, (3) plaintiff thereafter executed security agreement with debtor on December 28, 1972 which granted plaintiff continuing security interest in such inventory to secure (a) capital loan note, (b) certain other existing liabilities, including a wholesale account of indebtedness, and (c) all future advances, (4) debtor was constantly indebted to plaintiff from December, 1972, even though debtor fully repaid capital loan note on May 14, 1975, and (5) defendant claimed that since capital loan note (that is, the original indebtedness) had been fully repaid before date on which defendant's security interest attached, plaintiff had ceased to have security interest in debtor's inventory, court held (1) that since UCC § 9-204(3) clearly provides that obligations covered by a security agreement may include future advances, plaintiff's security agreement, because it covered future advances, was still effective, (2) that plaintiff was not required by UCC § 9-402(1) to file second financing statement to give notice of debtor's wholesale account of indebtedness, since UCC § 9-402(1) merely states that financing statement may be filed before security agreement is made or security interest otherwise attaches, which is what had occurred in the present case, and (3) that under UCC § 9-312(5)(a), because plaintiff had filed its financing statement before filing of defendant's financing statement, plaintiff's lien on debtor's collateral was superior to that of defendant. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

The Code adopts the system of notice filing under which it is contemplated that the complete state of affairs will be learned only after inquiry. Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535, 4 U.C.C. Rep. Serv. 56 (L. Div. 1967); In re Platt, 257 F. Supp. 478, 3 U.C.C. Rep. Serv. 719 (E.D. Pa. 1966).

Liability between the parties is created by the execution of a security agreement or other instrument, but no personal liability is created by the execution of a financing statement. Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966).

Sections 65 and 70 of the New York Personal Property Law which provide the effect and method of filing conditional sales contracts have now been superseded by §§ 9-402 and 9-403(1) of the UCC. In re Mutual Bd. & Packaging Corp., 342 F.2d 294 (2d Cir. N.Y. 1965).

The provision of subsection (1) of the instant section that "a financing statement is sufficient if it is signed by the debtor and the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral" adopts the system of notice filing under which what is required to be filed is not, as under chattel mortgage and conditional sales acts, the security agreement itself, but only a simple notice which may be filed before the security interest attaches or thereafter. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

The Code adopts the notice system of filing which places the burden of further inquiry upon anyone seeking additional information. Hartford Accident & Indem. Co. v. State Pub. Sch. Bldg. Auth., 26 Pa. D. & C.2d 717 (1961).

7. Purpose.

Although financing statement under UCC § 9-402(1) may be filed before security agreement is made or security interest otherwise attaches, financing statement standing alone does not create security interest in debtor's property, but merely serves notice that named creditor may have a security interest therein. Thus, where buyer of tractor did not execute security agreement granting security interest in tractor to seller, and where seller did not take possession of tractor when financing statement signed by buyer was executed, seller under UCC § 9-203(1)(a) and (b) had no valid security interest in tractor, even though financing statement was filed for record in office of county circuit clerk. Gibbs v. King, 263 Ark. 338, 564 S.W.2d 515 (1978).

Uniform Commercial Code § 9-402 adopts a system of "notice filing" which merely indicates that the secured party may have a security interest in the collateral described, the purpose of the filed statement being to give sufficient information necessary to put a searcher on inquiry, and the secured party has the duty to make sure of proper filing and indexing. John Deere Co. v. William C. Pahl Constr. Co., 59 Misc. 2d 872 (1969), aff'd, 34 A.D.2d 85, 310 N.Y.S.2d 945 (4 Dep't 1970).

The purpose of the statute is to avoid the real estate type of closing where all parties go to the clerk's office, check the records, execute the financing statement and file it secure in the knowledge that the creditor has first priority. The statute was designed to allow a creditor to preempt first rights against the borrower. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

The purpose of filing is to put the public generally on notice of the prior interest in collateral so that inquiry can be made. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

Under the Code the financing statement merely gives notice that an identified person, the creditor, may have a security interest in certain property, the collateral, but does not require a filing of the security agreement. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

The purpose of the adoption of the notice filing system, under the first sentence of subsection (1) of the instant section, was to provide a method of protecting security interests which at the same time would give potential creditors and other interested persons information and procedures adequate to enable the ascertainment of the facts they need to know. Inasmuch as the adoption of this system reflects a decision of policy by the experts who framed the Uniform Commercial Code, the court will so interpret the statute as to carry out the intent of the framers of the Code. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

The purpose of the notice filing under this section is to give notice that the secured party who has filed may have a security interest in the collateral described, and that further inquiry will be necessary to disclose the complete state of affairs. Annawan Mills, Inc. v. Northeastern Fibers Co., 26 Mass. App. Dec. 115, 4 U.C.C. Rep. Serv. 787 (1963).

8. Sufficiency of financing statement, generally.

Description of collateral in financing statement as consumer goods, personal property of all kinds and types, located on or about debtor's residence, not including household goods as defined in FTC rule, was sufficiently definite to permit perfection of security interest. In re Boykins, 120 B.R. 71 (Bankr. N.D. Miss. 1990).

Significance of error in financing statement, for purpose of determining whether it is seriously misleading, must be determined in light of what is "commercially reasonable." Pongetti v. Deposit Guar. Nat'l Bank (In re Strickland), 94 B.R. 898 (Bankr. N.D. Miss. 1988).

In action to recover possession of motor home that plaintiff secured party had sold to debtor under retail installment contract and security agreement, where (1) plaintiff, although authorized to file financing statement, did not do so before assigning installment contract and security agreement to bank, (2) after contract and security agreement had been assigned to bank, debtor transferred title to home to third-party purchaser, (3) such purchaser resold home to another third party who, in turn, resold it to defendant, (4) after first third-party purchaser had purchased home, bank filed financing statement that listed only original buyer of home as "debtor," and (5) on original buyer's default in making payments, bank reassigned installment contract and security agreement to plaintiff, which sought to replevy home from last third-party purchaser, court held (1) that even though bank was aware that title to home had been transferred to first third-party purchaser, bank nevertheless, on filing its financing statement, listed only original buyer as "debtor" on such statement, (2) that financing statement, as a result, failed under UCC §§ 9-402(1) and 9-105(1)(d) to identify "debtor" properly in situation where owner of collateral and obligor on financing agreement were not the same person, (3) that plaintiff's security interest was therefore not perfected, and (4) that since defendant third-party purchaser had purchased home out of ordinary course of business and without knowledge of plaintiff's unperfected security interest therein, defendant's ownership of home was free of such security interest under UCC § 9-301(1)(c). White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Under UCC § 9-402(1), a financing statement must include the name and address of the debtor. In this connection, however, the term "debtor" is defined by UCC § 9-105(1)(d) to include both the owner of the collateral and the obligor on the financing agreement if the owner and the obligor are not the same person. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Where chattel mortgage on trailer was defective under UCC § 9-402(1) as filed financing statement because it lacked both address of secured party and debtor's mailing address, chattel mortgagee's security interest was unperfected under § 9-302(1), and under UCC § 9-301(1)(b), judgment lien creditor, which had obtained judgment against chattel mortgagor, executed on such judgment, and seized trailer in suit, had priority to proceeds from trailer's sale. Cushman Sales & Serv. of Neb., Inc. v. Muirhead, 201 Neb. 495, 268 N.W.2d 440 (1978).

Identification of debtor, "Southern Supply Company of Greenville, N.C., Inc.," in financing statements as "Southern Supply Co." was not "seriously misleading" within meaning of UCC § 9-402(5), since identification was sufficient to put interested persons on notice of outstanding security interest. In re Southern Supply Co., 405 F. Supp. 20 (E.D.N.C. 1975).

Where defendant bank made loan to debtor under name "Lee Anderson," took security agreement on new automobile which was properly filed in county clerk's office and indexed under name of "Lee Anderson," but did not examine manufacturer's statement of origin, issued earlier to James Anderson, and took no steps to assure itself that car's title papers would be issued in name of Lee Anderson, where debtor applied for and received certificate of title in name of "James L. Anderson," and where plaintiff bank also made loan to debtor, as "James L. Anderson," taking and filing security agreement covering same automobile after checking with county clerk's office and determining that no prior liens on automobile had been filed against James L. Anderson, defendant bank's failure to file its lien in name shown on certificate of title was responsible for plaintiff bank's later determination, justified by lien records of county clerk, that there was no prior lien on record against automobile owned by James L. Anderson, and thus plaintiff bank's lien was entitled to priority over defendant bank's lien, although defendant bank was guilty of no intentional wrong and did all that was required by applicable provisions of UCC in taking and filing its security agreement. Central Nat'l Bank & Trust Co. v. Community Bank & Trust Co., 528 P.2d 710 (1974).

Under California version of UCC § 9-402(1), requirement that trade name as well as true name of debtor be included in financing statement was mandatory for perfection of security interest, despite fact that in particular case no creditor was actually misled by absence of trade name. In re Thrift Shoe Co., 502 F.2d 1211 (9th Cir. Cal. 1974).

Filing in 1967 of financing statement covering debtors' crops was sufficient under Indiana law to perfect security interest in crops arising out of security agreement executed in 1968. United States v. Gleaners & Farmers Coop. Elevator Co., 481 F.2d 104 (7th Cir. Ind. 1973).

Financing statements which did not contain correct name of debtor but listed debtor only by tradename used by debtor for his business did not substantially comply with statutory requirement and were fatally defective. In re Thomas, 466 F.2d 51 (9th Cir. Cal. 1972).

Under the UCC system of "notice" filing, the recorded statements indicated merely that the secured party of record may have a security interest in the collateral described, and further inquiry is necessary, as is stated in Comment 2 to UCC § 9-402, to disclose the complete state of affairs, or, otherwise stated, a financing statement discloses sufficient information if it enables any concerned creditor to contact the secured party or the claimant. In re King-Porter Co., 446 F.2d 722 (5th Cir. 1971).

Failure of Connecticut certificate of title to auto to state date of security agreement did not invalidate security interest in auto, absent any indication that omission misled trustee in bankruptcy or any creditor of bankrupt-owner of auto. In re Grandmont, 310 F. Supp. 968 (D. Conn. 1970).

The necessity of stating the maturity date of the obligation secured is not among the enumerated steps required to make sufficient the financing statement; however, the insertion of "demand" would not seriously mislead a later party in his attempt to locate the underlying security agreement. Mid-Eastern Elecs., Inc. v. First Nat'l Bank, 455 F.2d 141 (4th Cir. Md. 1970).

In view of broad purposes of UCC, restrictive construction should not be given to provision which sets forth what constitutes "sufficient" financing statement. American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okla. 1970).

Signed and filed financing statement afforded creditor no security interest in corn sold by debtor, where financing statement contained no language which could be interpreted as granting a security interest. Kaiser Aluminum & Chem. Sales, Inc. v. Hurst, 176 N.W.2d 166 (Iowa 1970).

Where a creditor's assistant treasurer intended to sign a financing statement but through inadvertence filed the statement without signing it, the typed words of the creditor's name were not an intended use of a symbol as a signature and the financing statement was not "signed" within the Code § 1-201(39) definition nor within the Code § 9-402(1) requirement even though a search of the town clerk's records would have disclosed the unsigned financing statement and the name and address of the secured party as typed in the blank space, the "unsigned" statement did not "substantially comply" with the Code requirements under § 9-402(5). Maine League Fed. Credit Union v. Atlantic Motors, 250 A.2d 497 (Me. 1969).

Sufficiency of financing statement will not be decided on motion for judgment on pleadings. West Publishing Co. v. Harrisburg Nat'l Bank & Trust Co., 48 Pa. D. & C.2d 53 (1969).

9. Misspelling of debtor's name.

Misspelling of corporate debtor's name-"Ranelli" instead of "Ranalli"-on filed financing statement was seriously misleading and amounted to no filing at all, so that security interest was ineffective as to person in possession. John Deere Co. v. William C. Pahl Constr. Co., 59 Misc. 2d 872 (1969), aff'd, 34 A.D.2d 85, 310 N.Y.S.2d 945 (4 Dep't 1970).

A financing statement is insufficient when it spells the name of the debtor as Kaplan when in fact it is Kaplas. Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535 (L. Div. 1967).

Under the provisions of subsection (5) of the instant section, a financing statement which substantially complies with the requirements of the section is sufficient even though it contains minor errors which are not seriously misleading. Thus, where the debtor was described as "Carroll, Edmund d/b/a Cozy Kitchen 574 Wash St Canton, Mass" and the word "Cozy" should have been "Kozy", it was held that the name of the debtor was accurately stated and the error in the name under which he did business was a minor error which was not seriously misleading. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

10. Misstatement of debtor's corporate or trade name.

Financing statement which fails to list the debtor's corporate name, and which gives only debtor's trade name, may nevertheless be sufficient if trade name is sufficiently similar to corporate name that it is not seriously misleading. Sencore, Inc. v. Pongetti (In re Columbus Typewriter Co.), 75 B.R. 834 (Bankr. N.D. Miss. 1987).

Identification of debtor, "Southern Supply Company of Greenville, N.C., Inc.," in financing statements as "Southern Supply Co." was not "seriously misleading" within meaning of UCC § 9-402(5), since identification was sufficient to put interested persons on notice of outstanding security interest. In re Southern Supply Co., 405 F. Supp. 20 (E.D.N.C. 1975).

Financing statement describing debtor as "Nara Dist. Inc." when in fact correct name of debtor was "Nara Non Food Distributing Inc." was sufficient as putting any interested person fairly on notice that there might be an outstanding lien against the Nara intended. In re Nara Non Food Distrib. Inc., 66 Misc. 2d 779 (1970), aff'd, 36 A.D.2d 796, 320 N.Y.S.2d 1014 (2d Dep't 1971).

Erroneous financing statement identification of secured party as "O. M. Scott Sons Co.", where even most basic inquiry to former would disclose that it was wholly owned subsidiary of latter, and would lead to full disclosure of exact state of affairs regarding asserted security interest. In re Colorado Mercantile Co., 299 F. Supp. 55 (D. Colo. 1969).

The insertion in a conditional sales contract of the purchaser's name as "Excel Department Stores" instead of its correct corporate title "Excel Stores, Inc." is a minor error not seriously misleading and does not affect the validity of the instrument. In re Excel Stores, Inc., 341 F.2d 961 (2d Cir. Conn. 1965).

11. Use of debtor's trade name only.

Secured party's financing statements were sufficient under UCC § 9-402 to perfect security interest in debtor's equipment, notwithstanding filing officer filed and indexed financing statements only under trade name of debtor, Kaw Lake Cement, and not under his true name, Joseph Arthur Fowler, where each financing statement named three debtors, Kaw Lake Cement, Jerry A. Fowler and J. A. Fowler. McMillin v. First Nat'l Bank & Trust Co., 407 F. Supp. 799 (W.D. Okla. 1975).

Financing statement which did not contain name of bankrupt debtor, but instead contained name of business that debtor was engaged in, was not in substantial compliance with Code. In re Thomas, 310 F. Supp. 338 (N.D. Cal. 1970), aff'd, 466 F.2d 51 (9th Cir. Cal. 1972).

12. Misidentification of secured party.

Although the Uniform Commercial Code clearly contemplates and sanctions "floating collateral" (after-acquired property of debtor) and "floating debt" (future advances), it does not contemplate "floating secured parties"-that is, an open-ended class of creditors with unsecured and unperfected interests who, after the debtor's bankruptcy, can assign their claims to a more senior lienor and magically secure and perfect their interests under an omnibus security agreement and financing statement. To allow "floating secured parties" would clearly be at odds with the "simple notice" requirements of UCC § 9-402 and would undercut perfection requirement of Article 9, which reflects UCC policy against secret security. Republic Nat'l Bank v. Fitzgerald, 565 F.2d 366 (5th Cir. Tex. 1978).

Financing statement which identified the debtor, an individual named Henry Platt, as Platt Fur Co., an unregistered fictitious name for debtor's business, was not "seriously misleading" and did not prejudice the perfection of the creditor's claim. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

13. Failure to identify owner of collateral.

In action to recover possession of motor home that plaintiff secured party had sold to debtor under retail installment contract and security agreement, where (1) plaintiff, although authorized to file financing statement, did not do so before assigning installment contract and security agreement to bank, (2) after contract and security agreement had been assigned to bank, debtor transferred title to home to third-party purchaser, (3) such purchaser resold home to another third party who, in turn, resold it to defendant, (4) after first third-party purchaser had purchased home, bank filed financing statement that listed only original buyer of home as "debtor," and (5) on original buyer's default in making payments, bank reassigned installment contract and security agreement to plaintiff, which sought to replevy home from last third-party purchaser, court held (1) that even though bank was aware that title to home had been transferred to first third-party purchaser, bank nevertheless, on filing its financing statement, listed only original buyer as "debtor" on such statement, (2) that financing statement, as a result, failed under UCC §§ 9-402(1) and 9-105(1)(d) to identify "debtor" properly in situation where owner of collateral and obligor on financing agreement were not the same person, (3) that plaintiff's security interest was therefore not perfected, and (4) that since defendant third-party purchaser had purchased home out of ordinary course of business and without knowledge of plaintiff's unperfected security interest therein, defendant's ownership of home was free of such security interest under UCC § 9-301(1)(c). White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Use of nominee was legitimate under Uniform Commercial Code; thus, recording of financing statement was entirely proper dispite fact that principal creditor's nominee, rather than principal creditor, was named as secured party. In re Cushman Bakery, 526 F.2d 23 (1st Cir. Me. 1975), cert. denied, 425 U.S. 937, 96 S. Ct. 1670, 48 L. Ed. 2d 178 (1976).

Under UCC § 9-402(1), a financing statement must include the name and address of the debtor. In this connection, however, the term "debtor" is defined by UCC § 9-105(1)(d) to include both the owner of the collateral and the obligor on the financing agreement if the owner and the obligor are not the same person. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Although owner of property permitted debtor to use it as collateral for loan from secured party and valid security interest attached in favor of secured party under security agreement given by debtor, secured party failed to properly perfect its interest in that financing statement it filed did not contain any reference to owner of collateral; in view of provision of UCC § 9-105(1)(d), that term "debtor" may include both owner of collateral and obligor if context so requires, UCC § 9-402, subdivisions (1) and (3), requiring that financing statement contain "debtor's" name, must be construed as referring to both actual debtor and owner of collateral, thus requiring both names on financing statement to perfect security interest. K.N.C. Whsle., Inc. v. AWMCO, Inc., 56 Cal. App. 3d 315, 99 A.L.R.3d 473 (1st Dist. 1976).

14. Effect of debtor's change of name or corporate structure.

In action by finance corporation against bank involving conflicting security interests in same automobile, where (1) dealer's invoice recited sale of automobile to wife and provided that she would pay $1,400 down and finance balance with plaintiff, (2) wife and husband executed (a) promissory note evidencing loan in amount of $2,995 from defendant, of which $1,400 was used as down payment for automobile and balance represented preexisting debt owed to defendant, and (b) security agreement which designated automobile as security for such loan, (3) husband, on giving dealer $1,400 down payment for automobile, executed installment sale contract in husband's name only in favor of dealer, which dealer assigned to plaintiff, (4) defendant on August 9, 1972 filed financing statement that designated both husband and wife as debtors, (5) plaintiff on August 10, 1972 filed financing statement that designated only husband as debtor, (6) husband defaulted on payments due plaintiff, and (7) both husband and wife defaulted on note given to defendant, court held (1) installment sale contract assigned to plaintiff served as security agreement under UCC § 9-203(1)(b) and plaintiff acquired valid security interest in automobile, (2) plaintiff's security interest in automobile validly attached under UCC § 9-204(1), since husband had "right" in automobile as matter of law and could use it for collateral, even though wife was vehicle's registered owner, (3) under UCC § 9-402(1) and § 9-105(1)(d) financing statement filed by plaintiff was defective, since it only listed husband as "debtor" and did not refer to wife who actually owned automobile, (4) defendant's security interest validly attached when both husband and wife signed security agreement granting security interest in automobile to defendant, (5) defendant's financing statement complied with UCC § 9-402(1), since it was signed by both husband and wife, and thus defendant's security interest in automobile was perfected, and (6) since defendant gave "value" under UCC § 1-201(44)(b) by taking security interest in automobile to secure defendant's preexisting claim, defendant's perfected security interest in vehicle extended to entire amount of defendant's loan to husband and wife, and such perfected security interest was superior to plaintiff's unperfected security interest. GMAC v. Washington Trust Co., 120 R.I. 197, 386 A.2d 1096, 3 A.L.R.4th 496 (1978).

Secured party apparently has duty under second sentence of UCC § 9-402(7) to monitor identity of debtor. Thus, secured party must take steps to insure that it will become aware of any changes of name, identity, or corporate structure of its debtor within four months after such change or else risk losing its perfected security interest in collateral acquired after that time, should the financing statement be found to be seriously misleading at time of the change. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Where (1) debtors, after secured party had perfected security interest in debtors' business fixtures, equipment, merchandise, inventory, and after-acquired property, transferred such collateral to corporation formed by debtors to operate business under new name, (2) corporation two and a half years later became bankrupt, (3) at time of such bankruptcy, merchandise and inventory of the business was not the same as that owned by original debtors when security interest was acquired by secured party, and (4) bankruptcy trustee claimed that under UCC § 9-402(7), secured party had only unsecured claim to proceeds from sale of corporation's inventory and merchandise acquired after four-month period following transfer of original inventory and merchandise to corporation, since such transfer involved change in the business' ownership and name that was seriously misleading, court held (1) that secured party did not have to file new financing statement within four months following such transfer in order to retain its perfected security interest in the after-acquired property, (2) that transfer situation was governed by third sentence of UCC § 9-402(7), and (3) that if any creditors had checked the corporation's source of title, they could easily have discovered the corporation's assumption of notes which were in the original debtors' individual names and, by running a check on those names, have found the secured party's filed financing statement. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Under UCC § 9-402, creditor, as holder of prior secured interest against debtor, did not have affirmative duty to amend or refile financing statement to reflect name change of debtor from "South Haven Fruit

Exchange" to "Blossom Trail Growers, Inc." in order to preserve its superior interest over subsequent creditor which had perfected its security interest against "Blossom Trail Growers, Inc." Continental Oil Co. v. Citizens Trust & Sav. Bank, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

Where financing statement was properly filed and debtor subsequently changed its corporate name, secured party was not under obligation to refile its financing statement to reflect such change of name notwithstanding secured party had knowledge of the change. Continental Oil Co. v. Citizens Trust & Sav. Bank, 57 Mich. App. 1, 225 N.W.2d 209 (1974), aff'd, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

Where secured party had perfected purchase money security interest in television equipment which it sold to debtor, subsequent transfer of all assets and liabilities of debtor corporation to newly formed corporation having same shareholders, officers and directors as debtor did not constitute "sale, exchange, or other disposition" of secured property within meaning of UCC § 9-306(2); thus, financing statement which was properly filed continued to be effective after transfer of assets and liabilities, although no amendment to financing statement was made to reflect change in name of debtors, where name change was minor and not seriously misleading, and financing statement was accurate in every other detail. In re Kittyhawk Tel. Corp., 75 Ohio Op. 2d 469, 516 F.2d 24 (6th Cir. Ohio 1975).

Where secured party entered into security agreement with partnership engaged in appliance business, covering "all present inventory belonging to the Dealer as well as any and all subsequently acquired inventory," where partnership assets were subsequently transferred to newly formed corporation, and where new financing statement was filed under name of partnership but was not filed with reference to corporation as debtor, security agreement containing after-acquired property clause was effective against newly-formed corporation and secured party's security interest extended to inventory subsequently acquired by corporation; fact that financing statement was filed under partnership name, "Clint's Appliance Sales and Service," rather than corporate name, "Clint's Appliance Sales and Service, Inc.," would not cause secured party's security interest to be unprotected against either corporation or trustee in bankruptcy; but, even if it could be said that financing statement was in some way misleading, under UCC § 9-402(7) (1972 Official Text) secured party's security interest remained perfected under its financing statement with partnership at least four months after partnership changed its "name, identity or corporate structure." Fliegel v. Associates Capital Co., 272 Or. 434, 537 P.2d 1144 (1975).

Secured creditor who had knowledge at time of execution of security agreement that debtor contemplated at future time changing its name to particular new name, but who nevertheless proceeded to extend credit knowing that original filing of financing statement would not reflect change and would therefore mislead and deceive potential creditors and purchasers, forfeited his protected interest when change of name occurred. In re Kalamazoo Steel Process, Inc., 503 F.2d 1218 (6th Cir. Mich. 1974).

In action between secured party and trustee in bankruptcy over rights to forestry equipment in possession of secured party, financing statement signed by corporation, whose separate existence had already ended by merger at time of signing, was sufficient to perfect security interest of corporation into which it was merged under UCC § 9-402 since statement was sufficient to put potential creditors on notice of prior security interest. In re Wilco Forest Mach., Inc., 491 F.2d 1041 (5th Cir. Ala. 1974).

In dispute between assignee for benefit of creditors and bank claiming security interest in proceeds from sale of collateral, bank held superior interest under UCC § 9-301(3) where, under New York version of UCC § 9-402, change of name of debtor firm did not affect perfection of filing made under former name, regardless of whether bank had knowledge of change of name. In re Pasco Sales Co., 77 Misc. 2d 724 (1974).

15. Signatures of parties, generally.

Where neither party has perfected his security interest, UCC § 9-312(5) determines priority between conflicting interests in same collateral; thus, where plaintiff-landlord had lien on tenant's property under terms of recorded lease which was valid under UCC § 9-204(3), but which was not perfected due to plaintiff's failure to file financing statement with secretary of state as required by UCC § 9-401(1)(c), and where defendant sold bar equipment to plaintiff's tenants under conditional sales contract and acquired purchase money security interest under UCC § 9-107(a), which was not perfected under UCC § 9-302(1) since defendant failed to obtain signatures of parties as required by UCC § 9-402(1), and where defendant subsequently repossessed and sold property in question, defendant's security interest took priority over plaintiff's either under theory that defendant perfected its security interest by repossessing and selling property or under theory that defendant's security interest attached prior to plaintiff's. Engelsma v. Superior Prods. Mfg. Co., 298 Minn. 77, 212 N.W.2d 884 (1973).

The formal requisites of a financing statement include no provisions for a witness. Myers v. F & M Bank, 125 Ga. App. 123, 186 S.E.2d 592 (1971).

Under the California statute, from which subsection 5 was omitted, it is mandatory that the signatures of both parties appear on an assignment of accounts receivable if it is to be valid as against the claim of the assignor's trustee in bankruptcy. Wilshire Oil Co. v. Costello, 348 F.2d 241 (9th Cir. Cal. 1965).

16. Signatures; particular applications.

Where (1) indemnity company, which had bound itself as surety for construction company, required construction company to execute general indemnity agreement as prerequisite to execution by indemnity company of performance and material-payment bonds, and (2) indemnity company, as against priority of claims of other creditors of construction company, based priority of its claim on financing statement that had been filed with indemnity agreement stapled to it, court held (1) that under UCC § 9-402(1), since filed financing statement did not contain debtor's signature, and indemnity agreement, which had been filed as security agreement, did not contain secured party's signature, debtor's signature on security agreement did not cure defect arising from its failure to sign financing statement, and secured party's signature on financing statement similarly did not cure defect arising from its failure to sign security agreement, (2) that such defects were not cured by stapling financing statement and security agreement together and filing them as one instrument, and (3) that as a result, indemnity company did not perfect its lien. Travelers Indem. Co. v. First Nat'l Bank, 368 So. 2d 836 (Miss. 1979).

Where (1) debtor executed security agreement giving creditor security interest in specified collateral and such security interest was perfected on April 5, 1971 by filing of financing statement sufficient under UCC § 9-402(1), (2) debtor on August 23, 1972 filed voluntary petition in bankruptcy and was thereafter adjudicated a bankrupt, (3) on September 19, 1972, two wholly owned subsidiaries of creditor assigned to creditor their unsecured claims against debtor, (4) debtor's equipment and inventory were sold pursuant to court order, and (5) creditor and both of its subsidiaries applied for payment of their claims from sale's proceeds, secured creditor was entitled to have its valid claim paid from such proceeds. However, secured creditor's subsidiaries, which had contended that after postbankruptcy assignment of their claims to secured creditor they held perfected security interests in debtor's collateral by virtue of creditor's security agreement with debtor and creditor's filing of financing statement, were not entitled to have their claims satisfied from sale's proceeds, since they were not designated as secured parties in creditor's security agreement with debtor and also did not sign or have their addresses on creditor's filed financing statement, as required by UCC § 9-402(1). Republic Nat'l Bank v. Fitzgerald, 565 F.2d 366 (5th Cir. Tex. 1978).

Under Florida law financing statement signed by original debtor and assignee of original secured party may function to perfect series of properly attached security agreements which in fact placed parties in position of debtor and secured party, even though no financing statement signed by original debtor and original secured party had been properly filed. Bramble Transp., Inc. v. Sam Senter Sales, Inc., 294 A.2d 97 (Del. Super. 1971), aff'd, 294 A.2d 104 (Del. 1972).

A financing statement executed on behalf of corporate debtor by a duly authorized officer who failed to show the capacity in which he signed, which was indexed solely in the names of the corporate creditor and debtor, substantially complied with the provisions of this section. Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966).

17. —Signature of secured party.

Holder of security interest in form of chattel mortgage on herd of cattle took priority over holder of judgment lien who attempted to levy execution on cattle, although financing statement filed by secured party omitted signature and also omitted addresses of both secured party and debtor: (1) lack of secured party's signature from financing statement was minor error and financing statement with that omission, nevertheless, was in substantial compliance with UCC § 9-402(1); and (2) absence of addresses of both debtor and secured party did not render financing statement ineffectual where all parties involved were residents of same small town, holder of judgment lien knew both debtor and secured party and where each of them lived, and there was no showing of prejudice to holder of judgment lien. Riley v. Miller, 549 S.W.2d 314, 100 A.L.R.3d 385 (Ky. Ct. App. 1977).

Signature requirement of UCC § 9-402 was satisfied by financing statement which contained handwritten name of corporate creditor in space labeled "Secured Party," notwithstanding fact that no agent of corporation signed statement, since signed name of creditor concealed nothing which might defeat purposes of Code, and financing statement as filed and available to subsequent prospective creditors of debtor would not have misled them in any significant manner, and action would have been denied no information material to making intelligent decisions regarding extending credit to debtor. In re Sport Shack, 383 F. Supp. 37 (N.D. Cal. 1974).

A security agreement, as distinguished from a financing statement, is not invalid because it is signed only by the debtor and not by the creditor or lending party. National-Dime Bank v. Cleveland Bros. Equip. Co., 20 Pa. D. & C.2d 511 (1959).

18. —Signature of debtor.

Security interest is not rendered invalid by lack of collateral owner's signature on financing statement where name and signature of debtor are present, since minor errors which are not seriously misleading are excused. United States Small Bus. Admin. v. Guaranty Bank & Trust Co., 874 F.2d 997 (5th Cir. 1989).

Creditor's filing of financing statement without debtor's signature, several months subsequent to lapse of original financing statement, was sufficient to renew perfection of security interest effective as of date of filing of second financing statement; however, the creditor was not protected during interim period between date of lapse and date of refiling. In re Abell, 66 B.R. 375 (Bankr. N.D. Miss. 1986).

The absence of a checkmark on a financing statement to show the debtor had authorized filing without her signature did not impair the creditor's security interest, where the statement was otherwise sufficient. Beneficial Fin. Co. v. Kurland Cadillac-Oldsmobile, Inc., 32 A.D.2d 643 (2d Dep't 1969).

Under New York Code § 9-402(2)(c) (subsection not contained in "official" or "uniform" version of Code) financing statement, indicating that filing without debtor's signature was authorized, was properly treated as proof that security agreement did in fact authorize such filing. Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535 (L. Div. 1967).

19. —Signatures on behalf of corporate or partnership parties.

Financing statement that was signed by only one member of partnership debtor was "signed by the debtor" within meaning of UCC § 9-402(1), since purpose of filed financing statement is only to provide notice and not to possess legal sufficiency of security agreement or other contract. In re Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977), rev'd on other grounds, 614 F.2d 399 (5th Cir. 1980).

Financing statement filed by secured party sufficiently complied with UCC § 9-402(1) where secured party named partnership as debtor by entering in space on financing statement labled "debtor" the words "Zondel Gardner, a partnership," since (1) under Uniform Commercial Code, partnership is legal entity and can be debtor, and (2) filed financing statement in suit was signed by member of debtor partnership in his capacity as partner. Gulf Nat'l Bank v. Franke, 563 F.2d 766 (5th Cir. 1977).

Financing statement was not "signed by the debtor" as required by UCC § 9-402(1), where debtor was "P. S. C. Products Corporation" and where statement was signed by officer of debtor corporation under legend which identified debtor as "Pacific Supply Co., division of P. S. C. Products Corp." In re Pasco Sales Co., 52 A.D.2d 138 (2d Dep't 1976).

Financing statement which gave name of debtor on line one as "Taylor, Maxime" and carried signature of debtor on line nine as "Green Mill Inn, Inc., by Maxime Taylor, President" substantially complied with statutory requirements, where office of Secretary of State was able, through cross-indexing, to locate filing in both corporate and individual names, and actual notice was thus available to anyone interested in filing. In re Green Mill Inn, Inc., 474 F.2d 14 (9th Cir. Cal. 1973).

In an action for conversion by seizure and sale of property covered by security agreement allegedly void presented triable issues of fact as to the validity of the agreement, precluding summary judgment, where agreement was undated, did not specify the amount of the debt, or the terms of repayment and was signed by an individual in his own name and not in his capacity as an officer or the debtor corporation but the agreement did name the debtor corporation in the body thereof, listed the collateral covered by it, and the individual signing it was in fact the president of the debtor authorized to sign. Cherno v. Bank of Babylon, 57 Misc. 2d 801 (1968).

Individual's signature on financing statement, without any indication that he had signed as representative of debtor corporation was "not seriously misleading" within Code § 9-402(5), where financing statement was filed solely under corporate name; where corporation had as part of its name surname of signor; and where no prior financing statements executed by signor or changes in corporate organization might mislead third parties. Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966).

20. —Requirement of manual signature.

Code requirement of manual signature was deleted by amendment adopted three months after filing of financing statement bearing machine signature; held, amendment dispensing with requirement of manual signature should be given retroactive or curative effect as remedial or procedural legislation, since it is of no substantive consequence to debtor or other creditors whether signature is manual or printed. In re Colorado Mercantile Co., 299 F. Supp. 55 (D. Colo. 1969).

Where a creditor's assistant treasurer intended to sign a financing statement but through inadvertence filed the statement without signing it, the typed words of the creditor's name were not an intended use of a symbol as a signature and the financing statement was not "signed" within the Code § 1-201(39) definition nor within the Code § 9-402(1) requirement even though a search of the town clerk's records would have disclosed the unsigned financing statement and the name and address of the secured party as typed in the blank space, the "unsigned" statement did not "substantially comply" with the Code requirements under § 9-402(5). Maine League Fed. Credit Union v. Atlantic Motors, 250 A.2d 497 (Me. 1969).

21. Addresses of parties, generally.

Under UCC § 9-402(1), a financing statement must include the name and address of the debtor. In this connection, however, the term "debtor" is defined by UCC § 9-105(1)(d) to include both the owner of the collateral and the obligor on the financing agreement if the owner and the obligor are not the same person. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

A financing statement which fails to give the address of the secured party is fatally defective. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

22. Addresses; particular applications.

Holder of security interest in form of chattel mortgage on herd of cattle took priority over holder of judgment lien who attempted to levy execution on cattle, although financing statement filed by secured party omitted signature and also omitted addresses of both secured party and debtor: (1) lack of secured party's signature from financing statement was minor error and financing statement with that omission, nevertheless, was in substantial compliance with UCC § 9-402(1); and (2) absence of addresses of both debtor and secured party did not render financing statement ineffectual where all parties involved were residents of same small town, holder of judgment lien knew both debtor and secured party and where each of them lived, and there was no showing of prejudice to holder of judgment lien. Riley v. Miller, 549 S.W.2d 314, 100 A.L.R.3d 385 (Ky. Ct. App. 1977).

Fact that financing statement filed by secured party listed as debtors' mailing address only "Jackson, Mississippi 39208," while security agreement itself gave their address as "Route 4, Box ________, Jackson, Mississippi 39208," did not constitute such deficiency as to prevent perfection of valid security interest. In re Bankrupt Estate of Smith, 508 F.2d 1323 (5th Cir. 1975).

In litigation involving conflicting claims by plaintiff and defendants of interest in trade fixture, defendants could not successfully assert that plaintiff's security interest had not been perfected as result of failure of security agreement, as filed, to include debtor's or secured party's mailing address as required by UCC § 9-402, where address as disclosed in agreement, as filed, substantially complied with statutory requirement, and defendants made no showing that they examined filed agreement or that they were misled by allegedly defective addresses. Goldie v. Bauchet Properties, 15 Cal. 3d 307, 540 P.2d 1, 99 A.L.R.3d 794 (1975).

In action between lender claiming security interest in inventory of mobile home dealer and mobile home manufacturer who had sold unit to debtor, lender's failure to include debtor's chief business address in financing statement was not "seriously misleading" and did not render statement invalid where statement was in substantial compliance with statutory requirements and where manufacturer failed to inspect security agreement or financing statement on file before shipping unit to debtor. GECC v. Aurora Mobile Homes, Inc., 37 Cal. App. 3d 1016 (4th Dist. 1974).

Where financing statement contained creditor's name and address, debtor's name, mailing address, trade name, and address of his chief place of business and description of mortgaged property which consisted of machinery and equipment located at debtor's chief place of business at address given in financing statement, finding that omission of debtor's residence address could not have been misleading to creditors was not clearly erroneous. Lines v. Bank of Cal., 467 F.2d 1274 (9th Cir. Cal. 1972).

It is unnecessary to set forth the address where collateral is to be located, in the description of collateral, whenever it is obvious or readily inferable that the type of collateral covered would naturally be located in those places where the debtor does business. In re Nickerson & Nickerson, Inc., 329 F. Supp. 93 (D. Neb. 1971), aff'd, 452 F.2d 56 (8th Cir. Neb. 1971).

Financing statement gave address as "Box 2146, Fort Worth, Texas": held, this was in substantial compliance with Code where information concerning secured interest could be obtained from this information. Silver v. Gulf City Body & Trailer Works, 432 F.2d 992 (5th Cir. Ala. 1970).

Financing statement filed with Secretary of State was incomplete in that it did not contain address of either secured party or debtor; held, statement was nonetheless valid where no prejudice was shown to interest of general creditors who admitted having made no inquiry of Secretary of State as to what property of bankrupt was subject to liens. In re French, 317 F. Supp. 1226 (E.D. Tenn. 1970).

Omission of addresses of debtors from filing statement was not fatal under Code § 9-402(1), where addresses were readily available and known to virtually all creditors. Rooney v. Mason, 394 F.2d 250 (10th Cir. Wyo. 1968).

23. —Effect of change of address.

Financing statement covering all inventory and after-acquired inventory and containing address of debtor's corporate offices and principal place of business covered all debtor's stores, and did not require amendment as store locations periodically changed. In re Little Brick Shirthouse, Inc., 347 F. Supp. 827 (N.D. Ill. 1972).

The Court cannot believe that a Kansas court would require a creditor to amend a financing statement simply because the debtor changed his address at a later date, so as to comply with the requirements of UCC § 9-402. In re McCoy, 330 F. Supp. 533 (D. Kan. 1971).

24. Description of collateral, generally.

UCC § 9-402 adopts a system of notice filing that is designed to replace rigid description requirements. Specifically, UCC § 9-402(5) provides that a financing statement that substantially complies with the requirements of UCC § 9-402 is effective, even though it contains minor errors that are not seriously misleading. However, although the description requirements have been made more liberal by subsection (5) of the statute, subsection (1) clearly requires some specificity of description. Thus, the financing statement must either indicate the type of collateral given or describe the particular item of which it consists. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Description of collateral in financing statement as "all assets...regardless of type or description now owned...or to be bought (by debtor) in the future" did not satisfy requirements of UCC § 9-402(1), since such language was too general, vague, and misleading to fulfill the statute's requirement that financing statement must at least reveal the type of collateral in order to give subsequent secured parties adequate notice of creditor's security interest in the property that constitutes the collateral. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Purpose of filing financing statement is notice to any third party; and requirement of description of collateral is satisfied if description reasonably informs third parties that certain identifiable item belonging to or in possession of debtor may be subject to prior security interest and that further inquiry is necessary to determine if it is exact item being offered them as collateral. Associates Capital Corp. v. Bank of Huntsville, 49 Ala. App. 523, 274 So. 2d 80 (Civ. App. 1973).

It is unnecessary to set forth the address where collateral is to be located, in the description of collateral, whenever it is obvious or readily inferable that the type of collateral covered would naturally be located in those places where the debtor does business. In re Nickerson & Nickerson, Inc., 329 F. Supp. 93 (D. Neb. 1971), aff'd, 452 F.2d 56 (8th Cir. Neb. 1971).

A financing statement is sufficient if it indicates the types or describes the items of collateral. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

25. Description; particular applications.

In suit by debtor's receiver challenging bank's priority as perfected security interest holder and its concomitant right to take possession and dispose of secured collateral, UCC § 9-402 did not require bank to give notice to debtor's creditors that original security agreement was amended to increase amount of its loan and terms of repayment where increased loan was secured by same collateral originally described in financing statement. Heights v. Citizens Nat'l Bank, 463 Pa. 48, 342 A.2d 738 (1975).

In view of Code provisions in which only distinction between non-fixture and fixture financing statements was provision that in latter instance financing statement "must also contain description of real estate concerned," it must be concluded that legislature intended that real estate description be mandatory, and in its absence security interest in fixtures was not perfected so as to affect parties other than parties to transaction. Home Sav. Ass'n v. Southern Union Gas Co., 486 S.W.2d 386 (Tex. Civ. App. 1972), writ ref'd n.r.e., (Apr. 18, 1973).

26. —After-acquired property.

Description of collateral in financing statement as "all assets...regardless of type or description now owned...or to be bought (by debtor) in the future" did not satisfy requirements of UCC § 9-402(1), since such language was too general, vague, and misleading to fulfill the statute's requirement that financing statement must at least reveal the type of collateral in order to give subsequent secured parties adequate notice of creditor's security interest in the property that constitutes the collateral. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

Where security agreement was dated August 10 and financing statement describing collateral as "all accounts, contract rights and chattel paper now owned or hereafter acquired" was filed on August 11, second security agreement dated December 7, in which debtor agreed to delivery continuing guarantees from its principals in amount of $150,000 rather than $125,000 as provided in August 10 security agreement was perfected, and financing statement previously filed must be applied to it. Richmond Crane Rigging & Drayage Co. v. Liberty Nat'l Bank, 27 Cal. App. 3d 968 (1st Dist. 1972).

Financing statement covering "all equipment, cash registers...used in operating of service stations at...900 block South Main, Sapulpa, Oklahoma" included after-acquired property at service station even though statement did not contain an after-acquired property clause. American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okla. 1970).

Financing statement covering "motor vehicles" is sufficiently specific under Code § 9-402(1) to perfect security interest of bank loaning money on chattel mortgage for three named automobiles; adding words "after acquired", while advisable, is not necessary where debtor is retail auto agency obviously buying and selling autos. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

Where bank held a security interest in debtor's inventory and accounts receivable currently owned and thereafter to be acquired, the financing statement reasonably identified the collateral which was described as "inventory and accounts receivable," and the omission of the word "future" was immaterial. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

The description in a financing statement that the collateral is "inventory" is sufficient to warn prospective creditors of the borrower that it may well include after-acquired property. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

Where a finance company made a loan to a luncheonette owner who signed a security agreement conveying to the finance company as collateral the business together with all its good will, fixtures, equipment and merchandise, the agreement providing that the fixtures consisted of certain enumerated items “together with all property and articles now, and which may hereafter be, used or mixed with, added or attached to, and/or substituted for, any of the foregoing described property”, and where the finance company filed a financing statement which set forth the specific items enumerated in the security agreement but made no reference to after-acquired property, and where subsequent to the filing of the financing statement a cash register was delivered to the luncheonette owner under a conditional sales agreement but no financing statement covering the cash register was filed by the seller within ten days after delivery, it was held that under the system of notice filing adopted by the Code, as disclosed by subsection (1) of the instant section, the financing company’s financing statement gave adequate notice of its security agreement with the after-acquired property clause contained therein, and that the financing statement covered the cash register as after-acquired property even though the cash register was not specifically referred to either in the security agreement or in the financing statement. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

27. —Accounts receivable.

“Accounts receivable” is adequate financing statement description of EOA contract within UCC § 9-402. In re Varney Wood Prods., Inc., 458 F.2d 435 (4th Cir. Va. 1972).

Properly filed financing statements describing collateral as “accounts receivable” adequately described debtor’s contracts and accounts for purpose of perfecting security interest therein. Walker Bank & Trust Co. v. Smith, 88 Nev. 502, 501 P.2d 639 (1972).

Description of collateral as “inventory and accounts receivable”, without including descriptive word “future”, is sufficient under Code § 9-402(1). In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

28. —Accuracy of description of single item of collateral.

Where security agreement and financing statement described collateral as watch and also identified watch by brand and model number, description of collateral was sufficient under UCC § 9-110; where security agreement described second item of collateral as, “ladies’ bridal set white gold,” but financing statement described collateral as, “one ladies’ bracelet set-white gold,” description of collateral in security agreement was sufficient to create security interest but description in financing statement did not reasonably identify collateral and thus secured party did not have perfected security interest in bridal set. DWG, Inc. v. Peltier, 563 P.2d 152 (Okla. 1977).

Security agreement and financing statement adequately described collateral as required by UCC §§ 9-203, 9-402, and 9-110 where, although secured party had erroneously omitted first digit of identification number of automobile, omitted digit represented information previously described in words on each document. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

Financing statement did not sufficiently describe drilling rig so as to reasonably notify plaintiff of existence of prior lien, where it contained no reference to self-propelling equipment, but, according to custom of industry, described merely stationary piece of equipment with deisel engine to operate it. Ray v. City Bank & Trust Co., 36 Ohio Misc. 83, 358 F. Supp. 630 (S.D. Ohio 1973).

Use of “COF” along with year and serial number was sufficient financing statement description of model of tractor known as “cab over tandum”. In re Richards, 455 F.2d 281 (6th Cir. Mich. 1972).

Financing statement describing automobile by year, maker, and model was not fatally defective under Code § 9-402(1) because of one digit mistake in eleven digit serial number, since error was “not seriously misleading” within Code § 9-402(5). Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535 (L. Div. 1967).

The description of a caterpillar scraper by an incorrect serial number is sufficient in the absence of some physical description appearing of record in the security instrument which provides a key to the identity of the property. Yancey Bros. Co.

v. Dehco, Inc., 108 Ga. App. 875, 134 S.E.2d 828 (1964).

29. —Crops.

Catfish raised by fish farmers did not qualify as "crop" for purpose of Section 75-9-203 and this section. Sunburst Bank v. Findley, 76 B.R. 547 (Bankr. N.D. Miss. 1987).

Where bank negligently failed to perfect its security interest in growing corn crop by omitting description of real estate as required by UCC § 9-402, thereby causing said collateral to be subordinated to interest of third party, this constituted an unjustifiable impairment of such collateral and served to discharge accommodation party from liability to extent of such impairment of collateral under UCC § 3-306. First Sec. Bank & Trust Co. v. Voelker (In re Estate of Voelker), 252 N.W.2d 400 (Iowa 1977).

Description of collateral as crops and "proceeds" from crops was sufficient to include federal subsidy payments to which debtor became entitled. In re Munger, 495 F.2d 511 (9th Cir. Cal. 1974).

In action between competing secured creditors over proceeds from debtor's crops, UCC § 9-402 requirement that collateral be adequately described was met where subsequent lender had actual knowledge of prior claim of security interest in debtor's property and crops; under UCC § 9-204(4), providing that no security interest attaches under after-acquired property clause to crops which become such more than one year after security agreement is executed, subsequent lender had burden of proving that crops in question were not planted until more than one year after original security agreement was executed. First Sec. Bank v. Wright, 521 P.2d 563 (Utah 1974).

Secured party was not entitled to recover from purchasers of crops covered by security agreement, where financing statement merely referred to debtor's 1967 peanut crop, which was in several counties on many different properties, and was insufficient to identify security described; although financing statement need not contain formal metes and bounds or other legal description of real property on which crops subject to security interests are grown, it must contain some description of real estate by which exact crops constituting secured property can be reasonably identified and any description which reasonably identifies "real estate" is sufficient to meet "notice filing" theory of UCC. First Nat'l Bank v. Calvin Pickle Co., 516 P.2d 265, 67 A.L.R.3d 302 (Okla. 1973).

Where financing statement and security agreement purportedly gave secured party security interest in all of debtor's crops, but contained accurate legal description of certain farm lands belonging to debtor and omitted 3 other parcels of land on which debtor planted and harvested crops, crop description was insufficient to put third person on notice under UCC. People's Bank v. Pioneer Food Indus., Inc., 253 Ark. 277, 486 S.W.2d 24 (1972).

Although §§ 9-402 and 9-110 were intended by legislature to require something less than legal description of land to apprise purchasers and creditors of security interest in growing crops, financing statement which described realty on which crops were raised as "land owned or leased by debtor in Cherokee County, Kansas" was insufficient to perfect security interest in such crops. Chanute Prod. Credit Ass'n v. Weir Grain & Supply, Inc., 210 Kan. 181, 499 P.2d 517 (1972).

30. —General terms of description.

UCC § 9-402 adopts a system of notice filing that is designed to replace rigid description requirements. Specifically, UCC § 9-402(5) provides that a financing statement that substantially complies with the requirements of UCC § 9-402 is effective, even though it contains minor errors that are not seriously misleading. However, although the description requirements have been made more liberal by subsection (5) of the statute, subsection (1) clearly requires some specificity of description. Thus, the financing statement must either indicate the type of collateral given or describe the particular item of which it consists. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Description of collateral in financing statement as "all assets...regardless of type or description now owned...or to be bought (by debtor) in the future" did not satisfy requirements of UCC § 9-402(1), since such language was too general, vague, and misleading to fulfill the statute's requirement that financing statement must at least reveal the type of collateral in order to give subsequent secured parties adequate notice of creditor's security interest in the property that constitutes the collateral. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Secured party's security interest in debtor's inventory was not perfected where description in financing statement required by UCC § 9-402(1) described collateral as "all accounts and contracts owned by the debtor or arising from the sale of inventory," since secured party could perfect security interest only in types of collateral listed on financing statement and under UCC § 9-105(1)(f), neither the term "accounts" nor the term "contracts" included inventory. Gulf Nat'l Bank v. Franke, 563 F.2d 766 (5th Cir. 1977).

Financing statement containing signatures of debtor and secured party, address of secured party, and containing description of collateral: "All Olivetti Corp. of America copying machines which have been delivered but not paid in full" met sufficiency test of description of collateral under UCC § 9-110 and formal requisites of financing statement under UCC § 9-402 and description reflected security interest under UCC § 1-201(37). First Nat'l Bank & Trust Co. v. Olivetti Corp. of Am., 130 Ga. App. 896, 204 S.E.2d 781 (1974).

Tools are ordinarily defined as implements used by hand, and use of words "tilling and harvesting tools" in financing statement did not accurately describe power-driven farm machinery such as mower, reaper, fertilizer, so as to perfect security interests in those items. In re Anselm, 344 F. Supp. 544 (W.D. Ky. 1972).

A filed financing statement covering "motor vehicles" is sufficiently specific under UCC § 9-402 to perfect the security interest of a bank loaning on a chattel mortgage for three named automobiles as opposed to an interest of the seller of the automobiles to receive payment for those cars because of a worthless check. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

31. —General terms of description; "consumer goods."

Reclamation petition filed by secured creditor of bankrupt was improperly denied where financing statement describing collateral as all consumer goods and personal property of all kinds and description located at debtor's address was adequate under UCC § 9-402(1). In re Turnage, 493 F.2d 505 (5th Cir. Ala. 1974).

Use of term "consumer goods" is too broad, general, and meaningless to fulfill code mandate that financing statement indicates "types" of collateral; therefore, security interest of lender in tape deck, speaker, and 21-inch portable television was void. In re Lehner, 303 F. Supp. 317 (D. Colo. 1969), aff'd, 427 F.2d 357 (10th Cir. Colo. 1970).

32. —General terms of description; "equipment."

Under UCC § 9-402(1) and UCC § 9-110, term "farm equipment" was sufficiently specific description of tractor to perfect security interest therein of federal Farmers Home Administration (FHA), since any reasonable third party who might consider accepting tractor as collateral would receive ample notice from secured party's filed financing statement that further inquiry was in order. United States v. Crittenden, 563 F.2d 678 (5th Cir. Ga. 1977), reh'g denied, 568 F.2d 1368 (5th Cir. Ga. 1978), vacated on other grounds, 440 U.S. 715, 99 S. Ct. 1448, 59 L. Ed. 2d 711 (1979), on remand, 600 F.2d 478 (5th Cir. Ga. 1979).

General description of collateral, which consisted of debtor's farming equipment, in financing statement filed by bank as "all equipment now owned or hereafter acquired by debtor," without indicating location of such equipment or its nature as farming equipment, was inadequate under UCC § 9-402(1) and § 9-110, and did not perfect bank's lien in collateral, so as to render it superior to right to collateral of trustee in bankruptcy. In re Werth, 443 F. Supp. 738 (D. Kan. 1977).

Under UCC § 9-402(1), description in filed financing statement of equipment constituting collateral adequately described collateral where financing statement, although it did not refer to repairs, replacement parts, and accessions to collateral as did security agreement itself, did refer to "pallet-mill operation and manufacturing equipment." National Acceptance Co. of Am. v. Doede, 78 F.R.D. 333 (W.D. Wis. 1978).

Unlike a financing statement which is designed merely to put creditors on notice that further inquiry is prudent, a security agreement embodies the intentions of the parties and is the primary source to which a creditor's or potential creditor's inquiry is directed and must be reasonably specific; thus term "equipment" in omnibus clause of security agreement did not include automobiles owned by bankrupt corporation. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Where on financing statement read "logging equipment and machinery used in logging operations" and another financing statement read "new and used equipment for logging and general construction", descriptions were sufficient to describe property so as to create valid lien on log-loader in question. Mountain Credit v. Michiana Lumber & Supply, Inc., 31 Colo. App. 112, 498 P.2d 967 (1972).

Description, "equipment of all kinds", in financing statement was sufficiently informative as to constitute notice required by UCC § 9-402(1). Maryland Nat'l Bank v. Porter-Way Harvester Mfg. Co., 300 A.2d 8 (Del. 1972).

Financing statement covering "all equipment, cash registers... used in operating of service stations at... 900 block South Main, Sapulpa, Oklahoma" included after-acquired property at service station even though statement did not contain an after-acquired property clause. American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okla. 1970).

33. —General terms of description; "personal property."

Description in financing statement, "all personal property", was not sufficient to perfect security interest against trustee in particular items of livestock and farm equipment set out in unrecorded security agreement. In re Fuqua, 330 F. Supp. 1050 (D. Kan. 1971), aff'd, 461 F.2d 1186 (10th Cir. Kan. 1972).

34. —Inventory.

In junior mortgagee's action for damages for defendant's alleged impairment of plaintiff's security, where defendant under security agreement with dealer in modular homes had security interest in all of dealer's present or future inventory and also first mortgage on 2.39 acres of land acquired by dealer for use as sales lot, on which dealer installed two modular homes; where plaintiff held second mortgage on dealer's 2.39 acres as security for loan on which dealer defaulted; and where defendant after dealer's default quickly removed modular homes from dealer's lot pursuant to written authorization from officer of dealer's company, (1) homes placed by dealer on sales lot, although installed on concrete foundations and connected to utilities, were inventory and not real property or fixtures under UCC § 9-109 (4), since they were goods intended for immediate or ultimate sale; (2) defendant held perfected purchase-money security interest in dealer's inventory under UCC § 9-401(1)(c) and UCC § 9-402(1), which under UCC § 9-312(3) took priority over plaintiff's junior-mortgage interest; and (3) defendant on dealer's default had right to take possession of homes on dealer's lot, since they were inventory collateral. Rakosi v. GECC, 59 A.D.2d 553 (2d Dep't 1977).

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

Description of collateral as "inventory and accounts receivable", without including descriptive word "future", is sufficient under Code § 9-402(1). In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

The description in a financing statement that the collateral is "inventory" is sufficient to warn prospective creditors of the borrower that it may well include after-acquired property. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

35. Minor errors.

UCC § 9-402 adopts a system of notice filing that is designed to replace rigid description requirements. Specifically, UCC § 9-402(5) provides that a financing statement that substantially complies with the requirements of UCC § 9-402 is effective, even though it contains minor errors that are not seriously misleading. However, although the description requirements have been made more liberal by subsection (5) of the statute, subsection (1) clearly requires some specificity of description. Thus, the financing statement must either indicate the type of collateral given or describe the particular item of which it consists. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Holder of security interest in form of chattel mortgage on herd of cattle took priority over holder of judgment lien who attempted to levy execution on cattle, although financing statement filed by secured party omitted signature and also omitted addresses of both secured party and debtor: (1) lack of secured party's signature from financing statement was minor error and financing statement with that omission, nevertheless, was in substantial compliance with UCC § 9-402(1); and (2) absence of addresses of both debtor and secured party did not render financing statement ineffectual where all parties involved were residents of same small town, holder of judgment lien knew both debtor and secured party and where each of them lived, and there was no showing of prejudice to holder of judgment lien. Riley v. Miller, 549 S.W.2d 314, 100 A.L.R.3d 385 (Ky. Ct. App. 1977).

Filing requirements of Georgia Uniform Commercial Code are analogous to requirements for certificate-of-title applications under Georgia Motor Vehicle Certificate of Title Act, since both laws require filing of security interests to give notice to both future creditors of debtor and to potential buyers of collateral involved. Roberts v. International Harvester Credit Corp., 143 Ga. App. 206, 237 S.E.2d 697 (1977).

Identification of debtor, "Southern Supply Company of Greenville, N.C., Inc.," in financing statements as "Southern Supply Co." was not "seriously misleading" within meaning of UCC § 9-402(5), since identification was sufficient to put interested persons on notice of outstanding security interest. In re Southern Supply Co., 405 F. Supp. 20 (E.D.N.C. 1975).

Filing of financing statement under assumed trade name was effective unless it was misleading to creditors. Siljeg v. National Bank of Commerce, 509 F.2d 1009 (9th Cir. Wash. 1975).

Failure of finance company to check box opposite provision that debtor had signed security agreement authorizing finance company to file statement was minor error which could not seriously mislead one who searched file; held, financing statement was effective. Beneficial Fin. Co. v. Kurland Cadillac-Oldsmobile, Inc., 32 A.D.2d 643 (2d Dep't 1969).

Individual's signature on financing statement, without any indication that he had signed as representative of debtor corporation was "not seriously misleading" within Code § 9-402(5), where financing statement was filed solely under corporate name; where corporation had as part of its name surname of signor; and where no prior financing statements executed by signor or changes in corporate organization might mislead third parties. Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966).

Where the names of the mortgagors and mortgagees and their respective addresses were typed in the appropriate boxes appearing in the form of financing statement, and the statement is signed by the mortgagors at the bottom of the form, the absence of the mortgagee's signature constituted only a minor error which was not seriously misleading. Benedict v. Lebowitz, 346 F.2d 120 (2d Cir. Conn. 1965).

The insertion in a conditional sales contract of the purchaser's name as "Excel Department Stores" instead of its correct corporate title "Excel Stores, Inc." is a minor error not seriously misleading and does not affect the validity of the instrument. In re Excel Stores, Inc., 341 F.2d 961 (2d Cir. Conn. 1965).

Under the provisions of subsection (5) of the instant section, a financing statement which substantially complies with the requirements of the section is sufficient even though it contains minor errors which are not seriously misleading. Thus, where the debtor was described as "Carroll, Edmund d/b/a Cozy Kitchen 574 Wash St Canton, Mass" and the word "Cozy" should have been "Kozy", it was held that the name of the debtor was accurately stated and the error in the name under which he did business was a minor error which was not seriously misleading. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

In Sales Finance Corp. v. McDermott Appliance Co. (1960) 340 Mass 493, 165 NE2d 119, it was said that the decision of the court that a minor variation in the name of the trustee in a statement of trust receipt financing filed under the former Uniform Trust Receipts Act did not render the statement ineffective was consonant with the provision of subsection (5) of the instant section that a financing statement substantially complying with the requirements of the section is effective even though it contains minor errors which are not seriously misleading. Sales Fin. Corp. v. McDermott Appliance Co., 340 Mass. 493, 165 N.E.2d 119 (1960).

36. Security agreement as financing statement.

Although it is evident under UCC § 9-402 that one instrument may qualify as both security agreement and financing statement, from which it follows that financing statement may also constitute security agreement if it otherwise qualifies as such, where parties executed only promissory note in standard form and short form financing statements and where neither financing statements nor note manifested intent to create or provide for security interest, there was no security agreement as required by UCC § 9-203 and thus creditor did not acquire security interest. Crete State Bank v. Lauhoff Grain Co., 195 Neb. 605, 239 N.W.2d 789 (1976).

Notice of sale agreement filed as financing statement satisfied Code § 9-402(1) requirement even though not indicating that there was underlying security interest involved. Rooney v. Mason, 394 F.2d 250 (10th Cir. Wyo. 1968).

Chattel mortgage may serve both as "security agreement" and "financing statement" under Nebraska UCC, provided it complies with requirements for said instruments, and contains necessary information, as set out in UCC; under UCC § 9-402, there are 2 formal requisites of "financing statement", i.e., (1) signatures and addresses of both parties, and (2) description of collateral by type or item, and financing statement substantially complying with these requirements is effective even though it contains minor errors which are not seriously misleading; address of secured party to be set out in financing statement under UCC § 9-402 must be such address as to enable one interested in searching records to contact party in question for purpose of obtaining information concerning security interest, i.e., address must be sufficiently complete to enable prudent person using reasonable care to locate secured party, and question of sufficiency of address of secured creditor is question of fact; thus, where chattel mortgage filed as financing statement gave address of secured party as "Omaha, Nebraska," and there was nothing in record from which court could determine whether secured creditor was or was not listed in Omaha city directory or in Omaha telephone book, or whether any of interested parties had knowledge of address of secured creditor, or any other information which would have facilitated contacting secured creditor, address was insufficient to comply with requirements of UCC § 9-402. Mid-America Dairymen, Inc. v. Newman Grove Coop. Creamery Co., 191 Neb. 74, 214 N.W.2d 18 (1974).

Lack of secured party's signature on chattel mortgage filed as financing statement does not make statement defective under Code § 9-402(1). Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

An instrument denominated as a "chattel mortgage" may be filed as a financing statement so long as it contains the necessary information. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

A conditional sales contract in proper form and timely filed with correct recording office has been filed in compliance with this section even though recorder erroneously returned instrument for an acknowledgment. In re Mutual Bd. & Packaging Corp., 342 F.2d 294 (2d Cir. N.Y. 1965).

A chattel mortgage on bowling alley equipment, although unsigned by the debtor as is required by this section, was held valid as a financing statement when filed, and the court commented upon the detailed nature of the information contained in the instrument and observing that § 1-102 requires a liberal interpretation of the Commercial Code added that a period of indulgence should be granted in connection with cases raising under the code. Alloway v. Stuart, 385 S.W.2d 41 (Ky. 1964).

37. Relationship between financing statement and security agreement.

In action by one secured party to replevy common debtor's inventory collateral from defendant second secured party, where (1) defendant's security agreement was executed on June 9, 1975, and defendant thereunder immediately took possession of debtor's inventory collateral, which consisted of automobile parts and accessories, (2) plaintiff previously, on December 15, 1972, had filed financing statement, in which it listed itself as creditor and same person as debtor, which provided that such statement covered debtor's inventory of automobile parts and accessories, (3) plaintiff thereafter executed security agreement with debtor on December 28, 1972 which granted plaintiff continuing security interest in such inventory to secure (a) capital loan note, (b) certain other existing liabilities, including a wholesale account of indebtedness, and (c) all future advances, (4) debtor was constantly indebted to plaintiff from December, 1972, even though debtor fully repaid capital loan note on May 14, 1975, and (5) defendant claimed that since capital loan note (that is, the original indebtedness) had been fully repaid before date on which defendant's security interest attached, plaintiff had ceased to have security interest in debtor's inventory, court held (1) that since UCC § 9-204(3) clearly provides that obligations covered by a security agreement may include future advances, plaintiff's security agreement, because it covered future advances, was still effective, (2) that plaintiff was not required by UCC § 9-402(1) to file second financing statement to give notice of debtor's wholesale account of indebtedness, since UCC § 9-402(1) merely states that financing statement may be filed before security agreement is made or security interest otherwise attaches, which is what had occurred in the present case, and (3) that under UCC § 9-312(5)(a), because plaintiff had filed its financing statement before filing of defendant's financing statement, plaintiff's lien on debtor's collateral was superior to that of defendant. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

That the financing statement may be filed prior to the making of a security agreement, and that a security interest need not be in existence at the time the financing statement is filed, is clearly contemplated under the provisions of this section. In re United Thrift Stores, Inc., 242 F. Supp. 714 (D.N.J. 1965), aff'd, 363 F.2d 11 (3d Cir. N.J. 1966).

38. Effect of refinancing.

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Where financing statement covering first loan to debtor was filed and four subsequent refinancing loans were made with no new filing, each subsequent loan being secured by chattel mortgages on same property that served as collateral for first loan, security interests covering subsequent loans were perfected, even though financing statement was on file before security interests in subsequent loans attached; fundamental and reiterated policy of code is that sequence of steps necessary for perfection is immaterial. In re Rivet, 299 F. Supp. 374 (E.D. Mich. 1969).

There is no requirement that when a loan is refinanced that a new financing statement must be filed and the former statement cancelled for the reason that the filing statement is not a lien which is discharged by refinancing but is merely a notice that there is some security interest in the designated collateral. Hence the original statement stands and continues the priority of the security interest for the benefit of the refinanced obligation. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

39. Amendment or continuation of security agreement.

Security agreement entered into in February, 1974, which created valid security interest as between debtor and bank with respect to debtor's accounts receivable, was perfected by existence of record of financing statement, first filed in 1959 and kept current by timely filed continuation statements, filed at regular intervals (in each case just short of five years), showing debtor's accounts receivable as collateral, notwithstanding there were intervals when debtor owed bank nothing, during which time no security interest existed, and that from 1972 to February, 1974, parties did not intend bank's loans to be secured; duly filed financing statement, showing same debtor, same secured party, and same collateral, serves to perfect security interest created in transaction other than that for which financing statement was originally filed. In re Gilchrist Co., 403 F. Supp. 197 (E.D. Pa. 1975), aff'd, 535 F.2d 1246 (3d Cir. Pa. 1976).

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

In dispute between assignee for benefit of creditors and bank claiming security interest in proceeds from sale of collateral, bank held superior interest under UCC § 9-301(3) where, under New York version of UCC § 9-402, change of name of debtor firm did not affect perfection of filing made under former name, regardless of whether bank had knowledge of change of name. In re Pasco Sales Co., 77 Misc. 2d 724 (1974).

Secured creditor with security interest in crops grown during 1971 on two tracts of land, one owned by debtor and other leased by him, took priority over purported attaching creditor, claiming under writ of attachment issued November 11, 1971, with respect to proceeds from sale of crops, notwithstanding security agreement covering both tracts of land was not filed until November 12, 1971: (1) With respect to "leased" tract, where original financing statement covering crops growing or to be grown thereon was filed on

July 5, 1966, security agreement covering 1971 crops on both "leased" and "owned" tracts was executed on February 18, 1971, and continuation statement was filed on June 28, 1971, security interest was perfected by filing of continuation statement prior to issuance of attaching creditor's purported attachment and levy thereunder, and took priority over any rights acquired by attaching creditor; (2) with respect to "owned" land, although secured party's security interest was not perfected by filing as of time of levy under attaching creditor's purported attachment, evidence showed that attaching creditor either had actual notice of secured party's interest in crops or could be charged with actual knowledge or duty to secure knowledge of secured party's interest, and, thus, secured party's unperfected security interest took priority over rights of attaching creditor. Gulf Oil Co. United States v. First Nat'l Bank, 503 S.W.2d 300 (Tex. Civ. App. 1973).

A careful reading of UCC § 9-402(4) does not compel a finding that the financing statement must be amended when the security agreement is altered. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

It was not necessary for agreement to provide for extension or renewal of indebtedness in order that creditor have valid security interest in property covered by security agreement where maker had executed and delivered security agreement to payee containing no provision for renewal or extension of note, financing statement containing no maturity date was filed, maker made payment on original note and executed and delivered to payee renewal note which recited date of original loan and also referred to collateral for original loan, and maker failed to pay note when it became due. In re Cantrill Constr. Co., 418 F.2d 705 (6th Cir. Ky. 1969), cert. denied, 397 U.S. 990, 90 S. Ct. 1124, 25 L. Ed. 2d 398 (1970).

40. Assignment of security interest of priority.

In receivership proceedings involving conflicting petitions to reclaim assets of insolvent corporation, secured party which had loaned money to insolvent and had performed every act required by law to obtain perfected security interest in all of insolvent's receivables, including filing of financing statement pursuant to UCC §§ 9-302(1), 9-304(1), and 9-402(1), had priority over all unsecured general creditors, including investors in the insolvent corporation who held debentures and notes which stated on their face that they were subordinate to claims of all other contract creditors. Coastal Fin. Corp. v. Coastal Fin. Corp., 120 R.I. 317, 387 A.2d 1373 (1978).

Plaintiff's security interest in all present and future Medicaid and Medicare accounts receivable of ambulance company, which plaintiff perfected on May 11, 1972 by filing financing statement in accordance with UCC § 9-402, had priority over state tax warrant for sum owed by ambulance company for employee income-withholding taxes, which warrant was filed on October 8, 1975 and under which state tax department had levied on Medicaid payments owed to ambulance company by county department of social services. In such case, priority of plaintiff's security-interest lien was not affected by state statute providing that assignment of claim of supplier of medical assistance was invalid as against any social services district since such statute, although prohibiting enforcement of plaintiff's assignment against any social services district, did not prohibit enforcement of such assignment as against any other person. IMFC Professional Servs., Inc. v. State, 59 A.D.2d 1047 (4th Dep't 1977).

Where 1966 loan was secured by assignment of contract right, where financing statement filed in 1966 was in compliance with UCC § 9-402(1) and where secured party made subsequent loans to debtor in 1967 and 1968, even if 1966 and 1967 notes did not contain future advance clauses, secured party maintained position of perfected secured creditor with respect to 1968 loan which was also secured by assignment of contract rights covered by 1966 note and financing statement. In re Estate of Gruder, 89 Misc. 2d 477 (1977).

Where automobile dealer sold automobile under retail instalment contract and assigned contract to bank with unconditional guarantee of payment, automobile dealer was subrogated to rights of bank in collateral, and where UCC § 9-402 required filing of financing statement in order to perfect security interest in such collateral, and where both parties failed to file such financing statement, dealer was entitled to be discharged to extent of any loss sustained by reason of bank's failure to file statement. First Nat'l Bank v. Haugen Ford, Inc., 219 N.W.2d 847 (N.D. 1974).

41. Transfer of collateral by debtor.

Where (1) bank advanced loan guaranteed by Federal Small Business Administration, to owner of business, (2) bank secured loan by perfected security interest in all of debtor's furniture, fixtures, machinery, and equipment, (3) bank filed financing statement which listed debtor's corporation as debtor, and (4) such corporation, without knowledge or consent of bank or SBA as secured creditors, sold collateral subject to creditors' security interest to second corporation which became bankrupt and had its assets sold at public auction, court held (1) that bankruptcy judge committed error in ruling that although bank and SBA did not impliedly or expressly consent to transfer of collateral to second corporation, failure of bank and SBA to file financing statement naming second corporation as debtor rendered bank's and SBA's previously perfected security interest ineffective against second corporation, and (2) that under Cal UCC § 9-306(2), stating that security interest continues in collateral notwithstanding its sale by debtor unless disposition was authorized by secured party, and Cal UCC § 9-402(6), providing that filed financing statement remains effective with respect to collateral transferred by debtor, even though secured party knows of or consents to such transfer, security interest of bank and SBA clearly survived subsequent transfer of collateral to second corporation. United States v. Ocean Elecs. Corp., 451 F. Supp. 511 (S.D. Cal. 1978).

"Collateral" as used in third and final sentence of UCC § 9-402(7) is not limited as it is in the second sentence, where it is defined as that collateral acquired by debtor more than four months after change in debtor's name. Instead, the final sentence speaks of collateral transferred by the debtor, which must mean the property subject to the security interest. The final sentence is clear that the filed statement remains effective with respect to collateral transferred by debtor, regardless of knowledge or consent of secured party. This also means collateral which consists of after-acquired property. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Where vendee of automobile, who was debtor of secured party who had failed to file financing statement under Code § 9-402, resold automobile to vendor, such subsequent sale vested title to automobile in vendor, superior to any claim of third party. Dunford v. Columbus Auto Auction, Inc., 114 Ga. App. 407, 151 S.E.2d 464 (1966).

ATTORNEY GENERAL OPINIONS

Under Revised Article 9, signatures and acknowledgments are not required elements in financing statements or related documents. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

RESEARCH REFERENCES

ALR. Construction and application of statutory provisions respecting registration of mortgages on personal property in case of residence of other states. 10 A.L.R.2d 764.

Necessity and sufficiency of notice or statement prescribed by factor's lien law. 96 A.L.R.2d 727.

Sufficiency of description of crops under UCC §§ 9-203(b) and 9-402(1). 67 A.L.R.3d 308.

Sufficiency of designation of debtor or secured party in security agreement or financing statement under UCC § 9-402. 99 A.L.R.3d 478.

Sufficiency of address of debtor in financing statement required by UCC § 9-402(1), 99 A.L.R.3d 807.

Sufficiency of address of secured party in financing statement required under UCC § 9-402(1). 99 A.L.R.3d 1080.

Effectiveness of original financing statement under UCC Article 9 after change in debtor's name, identity, or business structure. 99 A.L.R.3d 1194.

Sufficiency of description of collateral in financing statement under UCC §§ 9-110 and 9-402. 100 A.L.R.3d 10.

Sufficiency of secured party's signature on financing statement or security agreement under UCC § 9-402. 100 A.L.R.3d 390.

Sufficiency of debtor's signature on security agreement or financing statement under UCC §§ 9-203 and 9-402. 3 A.L.R.4th 502.

Am Jur. 8A Am. Jur. 2d, Bailments §§ 37, 27.

66 Am. Jur. 2d, Records and Recording Laws §§ 54 et seq., 71 et seq., 136 et seq.

68A Am. Jur. 2d, Secured Transactions §§ 253, 277, 284.

Formal requisites of financing statement; amendments, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:631-9:639.

Formal requirements of financing statement; amendments, 19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3651 et seq.

CJS. 8 C.J.S., Bailments § 22.

79 C.J.S., Secured Transactions §§ 65-80.

76 C.J.S., Records §§ 8, 9, 12, 13, 33-36, 69 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-503. Name of debtor and secured party.

(a) A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend or restate the registered organization's name;

(2) Subject to subsection (f) if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name specified; or

(ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) If the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g), if the debtor is an individual to whom this state has issued a driver's license or nondriver's identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license or nondriver's identification card;

(5) If the debtor is an individual to whom paragraph (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

(A) If the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

(g) If this state has issued to an individual more than one (1) driver's license or nondriver's identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record.

SOURCES: Former 1972 Code § 75-9-503 [Codes, 1942, § 41A:9-503; Laws, 1966, ch. 316, § 9-503, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-609 by Laws, 2001, ch. 495, § 1. Present § 75-9-503 was derived from former 1972 Code § 75-9-402 [Codes, 1942, § 41A:9-402; Laws, 1966, ch. 316, § 9-402; Laws, 1968, ch. 490, § 1; Laws, 1977, ch. 452, § 25, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 13, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in (b)(2) by substituting "subsection (a)(6)(B)" for "subsection (a)(4)(B)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

JUDICIAL DECISIONS

1. Use of debtor's nickname.

Even though defendant bank's financing statement used the individual debtor's nickname, not his legal name, the financing statement was not seriously misleading because plaintiff bank had actual knowledge that the individual was known by the nickname used in the financing statement, and the individual was identified by both names in numerous places in plaintiff bank's own files. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549 (5th Cir. 2007).

ATTORNEY GENERAL OPINIONS

Under Revised Article 9, signatures and acknowledgments are not required elements in financing statements or related documents. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

§ 75-9-504. Indication of collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to Section 75-9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

SOURCES: Former 1972 Code § 75-9-504 [Codes, 1942, § 41A:9-504; Laws, 1966, ch. 316, § 9-504; Laws, 1970, ch. 272, § 1; Laws, 1977, ch. 452, § 34, eff from and after April 1, 1978] is now found in comparable provisions enacted at §§ 75-9-610, 75-9-611, 75-9-615, 75-9-617, 75-9-618, and 75-9-624 by Laws, 2001, ch. 495, § 1. Present § 75-9-504 was derived from former 1972 Code § 75-9-402 [Codes, 1942, § 41A:9-402; Laws, 1966, ch. 316, § 9-402; Laws, 1968, ch. 490, § 1; Laws, 1977, ch. 452, § 25, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-402(1).

6. In general; scope.
7. Purpose.
8. Sufficiency of financing statement, generally.
9. Description of collateral, generally.
10. Description; particular applications.
11. —After-acquired property.
12. —Accounts receivable.
13. —Accuracy of description of single item of collateral.
14. —Crops.
15. —General terms of description.
16. —General terms of description; "consumer goods."
17. —General terms of description; "equipment."
18. —General terms of description; "personal property."
19. —Inventory.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-402(1).

6. In general; scope.

In action by one secured party to replevy common debtor's inventory collateral from defendant second secured party, where (1) defendant's security agreement was executed on June 9, 1975, and defendant thereunder immediately took possession of debtor's inventory collateral, which consisted of automobile parts and accessories, (2) plaintiff previously, on December 15, 1972, had filed financing statement, in which it listed itself as creditor and same person as debtor, which provided that such statement covered debtor's inventory of automobile parts and accessories, (3) plaintiff thereafter executed security agreement with debtor on December 28, 1972 which granted plaintiff continuing security interest in such inventory to secure (a) capital loan note, (b) certain other existing liabilities, including a wholesale account of indebtedness, and (c) all future advances, (4) debtor was constantly indebted to plaintiff from December, 1972, even though debtor fully repaid capital loan note on May 14, 1975, and (5) defendant claimed that since capital loan note (that is, the original indebtedness) had been fully repaid before date on which defendant's security interest attached, plaintiff had ceased to have security interest in debtor's inventory, court held (1) that since UCC § 9-204(3) clearly provides that obligations covered by a security agreement may include future advances, plaintiff's security agreement, because it covered future advances, was still effective, (2) that plaintiff was not required by UCC § 9-402(1) to file second financing statement to give notice of debtor's wholesale account of indebtedness, since UCC § 9-402(1) merely states that financing statement may be filed before security agreement is made or security interest otherwise attaches, which is what had occurred in the present case, and (3) that under UCC § 9-312(5)(a), because plaintiff had filed its financing statement before filing of defendant's financing statement, plaintiff's lien on debtor's collateral was superior to that of defendant. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

The Code adopts the system of notice filing under which it is contemplated that the complete state of affairs will be learned only after inquiry. Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535, 4 U.C.C. Rep. Serv. 56 (L. Div. 1967); In re Platt, 257 F. Supp. 478, 3 U.C.C. Rep. Serv. 719 (E.D. Pa. 1966).

Liability between the parties is created by the execution of a security agreement or other instrument, but no personal liability is created by the execution of a financing statement. Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966).

Sections 65 and 70 of the New York Personal Property Law which provide the effect and method of filing conditional sales contracts have now been superseded by §§ 9-402 and 9-403(1) of the UCC. In re Mutual Bd. & Packaging Corp., 342 F.2d 294 (2d Cir. N.Y. 1965).

The provision of subsection (1) of the instant section that "a financing statement is sufficient if it is signed by the debtor and the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral" adopts the system of notice filing under which what is required to be filed is not, as under chattel mortgage and conditional sales acts, the security agreement itself, but only a simple notice which may be filed before the security interest attaches or thereafter. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

The Code adopts the notice system of filing which places the burden of further inquiry upon anyone seeking additional information. Hartford Accident & Indem. Co. v. State Pub. Sch. Bldg. Auth., 26 Pa. D. & C.2d 717 (1961).

7. Purpose.

Although financing statement under UCC § 9-402(1) may be filed before security agreement is made or security interest otherwise attaches, financing statement standing alone does not create security interest in debtor's property, but merely serves notice that named creditor may have a security interest therein. Thus, where buyer of tractor did not execute security agreement granting security interest in tractor to seller, and where seller did not take possession of tractor when financing statement signed by buyer was executed, seller under UCC § 9-203(1)(a) and (b) had no valid security interest in tractor, even though financing statement was filed for record in office of county circuit clerk. Gibbs v. King, 263 Ark. 338, 564 S.W.2d 515 (1978).

Uniform Commercial Code § 9-402 adopts a system of "notice filing" which merely indicates that the secured party may have a security interest in the collateral described, the purpose of the filed statement being to give sufficient information necessary to put a searcher on inquiry, and the secured party has the duty to make sure of proper filing and indexing. John Deere Co. v. William C. Pahl Constr. Co., 59 Misc. 2d 872 (1969), aff'd, 34 A.D.2d 85, 310 N.Y.S.2d 945 (4 Dep't 1970).

The purpose of the statute is to avoid the real estate type of closing where all parties go to the clerk's office, check the records, execute the financing statement and file it secure in the knowledge that the creditor has first priority. The statute was designed to allow a creditor to preempt first rights against the borrower. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

The purpose of filing is to put the public generally on notice of the prior interest in collateral so that inquiry can be made. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

Under the Code the financing statement merely gives notice that an identified person, the creditor, may have a security interest in certain property, the collateral, but does not require a filing of the security agreement. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

The purpose of the adoption of the notice filing system, under the first sentence of subsection (1) of the instant section, was to provide a method of protecting security interests which at the same time would give potential creditors and other interested persons information and procedures adequate to enable the ascertainment of the facts they need to know. Inasmuch as the adoption of this system reflects a decision of policy by the experts who framed the Uniform Commercial

Code, the court will so interpret the statute as to carry out the intent of the framers of the Code. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

The purpose of the notice filing under this section is to give notice that the secured party who has filed may have a security interest in the collateral described, and that further inquiry will be necessary to disclose the complete state of affairs. Annawan Mills, Inc. v. Northeastern Fibers Co., 26 Mass. App. Dec. 115, 4 U.C.C. Rep. Serv. 787 (1963).

8. Sufficiency of financing statement, generally.

Sufficiency of financing statement will not be decided on motion for judgment on pleadings. West Publishing Co. v. Harrisburg Nat'l Bank & Trust Co., 48 Pa. D. & C.2d 53 (1969).

Where a creditor's assistant treasurer intended to sign a financing statement but through inadvertence filed the statement without signing it, the typed words of the creditor's name were not an intended use of a symbol as a signature and the financing statement was not "signed" within the Code § 1-201(39) definition nor within the Code § 9-402(1) requirement even though a search of the town clerk's records would have disclosed the unsigned financing statement and the name and address of the secured party as typed in the blank space, the "unsigned" statement did not "substantially comply" with the Code requirements under § 9-402(5). Maine League Fed. Credit Union v. Atlantic Motors, 250 A.2d 497 (Me. 1969).

The necessity of stating the maturity date of the obligation secured is not among the enumerated steps required to make sufficient the financing statement; however, the insertion of "demand" would not seriously mislead a later party in his attempt to locate the underlying security agreement. Mid-Eastern Elecs., Inc. v. First Nat'l Bank, 455 F.2d 141 (4th Cir. Md. 1970).

In view of broad purposes of UCC, restrictive construction should not be given to provision which sets forth what constitutes "sufficient" financing statement. American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okla. 1970).

Signed and filed financing statement afforded creditor no security interest in corn sold by debtor, where financing statement contained no language which could be interpreted as granting a security interest. Kaiser Aluminum & Chem. Sales, Inc. v. Hurst, 176 N.W.2d 166 (Iowa 1970).

Failure of Connecticut certificate of title to auto to state date of security agreement did not invalidate security interest in auto, absent any indication that omission misled trustee in bankruptcy or any creditor of bankrupt-owner of auto. In re Grandmont, 310 F. Supp. 968 (D. Conn. 1970).

Under the UCC system of "notice" filing, the recorded statements indicated merely that the secured party of record may have a security interest in the collateral described, and further inquiry is necessary, as is stated in Comment 2 to UCC § 9-402, to disclose the complete state of affairs, or, otherwise stated, a financing statement discloses sufficient information if it enables any concerned creditor to contact the secured party or the claimant. In re King-Porter Co., 446 F.2d 722 (5th Cir. 1971).

Financing statements which did not contain correct name of debtor but listed debtor only by tradename used by debtor for his business did not substantially comply with statutory requirement and were fatally defective. In re Thomas, 466 F.2d 51 (9th Cir. Cal. 1972).

Filing in 1967 of financing statement covering debtors' crops was sufficient under Indiana law to perfect security interest in crops arising out of security agreement executed in 1968. United States v. Gleaners & Farmers Coop. Elevator Co., 481 F.2d 104 (7th Cir. Ind. 1973).

Under California version of UCC § 9-402(1), requirement that trade name as well as true name of debtor be included in financing statement was mandatory for perfection of security interest, despite fact that in particular case no creditor was actually misled by absence of trade name. In re Thrift Shoe Co., 502 F.2d 1211 (9th Cir. Cal. 1974).

Where defendant bank made loan to debtor under name "Lee Anderson," took security agreement on new automobile which was properly filed in county clerk's office and indexed under name of "Lee Anderson," but did not examine manufacturer's statement of origin, issued earlier to James Anderson, and took no steps to assure itself that car's title papers would be issued in name of Lee Anderson, where debtor applied for and received certificate of title in name of "James L. Anderson," and where plaintiff bank also made loan to debtor, as "James L. Anderson," taking and filing security agreement covering same automobile after checking with county clerk's office and determining that no prior liens on automobile had been filed against James L. Anderson, defendant bank's failure to file its lien in name shown on certificate of title was responsible for plaintiff bank's later determination, justified by lien records of county clerk, that there was no prior lien on record against automobile owned by James L. Anderson, and thus plaintiff bank's lien was entitled to priority over defendant bank's lien, although defendant bank was guilty of no intentional wrong and did all that was required by applicable provisions of UCC in taking and filing its security agreement. Central Nat'l Bank & Trust Co. v. Community Bank & Trust Co., 528 P.2d 710 (1974).

Identification of debtor, "Southern Supply Company of Greenville, N.C., Inc.," in financing statements as "Southern Supply Co." was not "seriously misleading" within meaning of UCC § 9-402(5), since identification was sufficient to put interested persons on notice of outstanding security interest. In re Southern Supply Co., 405 F. Supp. 20 (E.D.N.C. 1975).

In action to recover possession of motor home that plaintiff secured party had sold to debtor under retail installment contract and security agreement, where (1) plaintiff, although authorized to file financing statement, did not do so before assigning installment contract and security agreement to bank, (2) after contract and security agreement had been assigned to bank, debtor transferred title to home to third-party purchaser, (3) such purchaser resold home to another third party who, in turn, resold it to defendant, (4) after first third-party purchaser had purchased home, bank filed financing statement that listed only original buyer of home as "debtor," and (5) on original buyer's default in making payments, bank reassigned installment contract and security agreement to plaintiff, which sought to replevy home from last third-party purchaser, court held (1) that even though bank was aware that title to home had been transferred to first third-party purchaser, bank nevertheless, on filing its financing statement, listed only original buyer as "debtor" on such statement, (2) that financing statement, as a result, failed under UCC §§ 9-402(1) and 9-105(1)(d) to identify "debtor" properly in situation where owner of collateral and obligor on financing agreement were not the same person, (3) that plaintiff's security interest was therefore not perfected, and (4) that since defendant third-party purchaser had purchased home out of ordinary course of business and without knowledge of plaintiff's unperfected security interest therein, defendant's ownership of home was free of such security interest under UCC § 9-301(1)(c). White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Under UCC § 9-402(1), a financing statement must include the name and address of the debtor. In this connection, however, the term "debtor" is defined by UCC § 9-105(1)(d) to include both the owner of the collateral and the obligor on the financing agreement if the owner and the obligor are not the same person. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community

Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Where chattel mortgage on trailer was defective under UCC § 9-402(1) as filed financing statement because it lacked both address of secured party and debtor's mailing address, chattel mortgagee's security interest was unperfected under § 9-302(1), and under UCC § 9-301(1)(b), judgment lien creditor, which had obtained judgment against chattel mortgagor, executed on such judgment, and seized trailer in suit, had priority to proceeds from trailer's sale. Cushman Sales & Serv. of Neb., Inc. v. Muirhead, 201 Neb. 495, 268 N.W.2d 440 (1978).

Significance of error in financing statement, for purpose of determining whether it is seriously misleading, must be determined in light of what is "commercially reasonable." Pongetti v. Deposit Guar. Nat'l Bank (In re Strickland), 94 B.R. 898 (Bankr. N.D. Miss. 1988).

Description of collateral in financing statement as consumer goods, personal property of all kinds and types, located on or about debtor's residence, not including household goods as defined in FTC rule, was sufficiently definite to permit perfection of security interest. In re Boykins, 120 B.R. 71 (Bankr. N.D. Miss. 1990).

9. Description of collateral, generally.

UCC § 9-402 adopts a system of notice filing that is designed to replace rigid description requirements. Specifically, UCC § 9-402(5) provides that a financing statement that substantially complies with the requirements of UCC § 9-402 is effective, even though it contains minor errors that are not seriously misleading. However, although the description requirements have been made more liberal by subsection (5) of the statute, subsection (1) clearly requires some specificity of description. Thus, the financing statement must either indicate the type of collateral given or describe the particular item of which it consists. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Description of collateral in financing statement as "all assets...regardless of type or description now owned...or to be bought (by debtor) in the future" did not satisfy requirements of UCC § 9-402(1), since such language was too general, vague, and misleading to fulfill the statute's requirement that financing statement must at least reveal the type of collateral in order to give subsequent secured parties adequate notice of creditor's security interest in the property that constitutes the collateral. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Purpose of filing financing statement is notice to any third party; and requirement of description of collateral is satisfied if description reasonably informs third parties that certain identifiable item belonging to or in possession of debtor may be subject to prior security interest and that further inquiry is necessary to determine if it is exact item being offered them as collateral. Associates Capital Corp. v. Bank of Huntsville, 49 Ala. App. 523, 274 So. 2d 80 (Civ. App. 1973).

It is unnecessary to set forth the address where collateral is to be located, in the description of collateral, whenever it is obvious or readily inferable that the type of collateral covered would naturally be located in those places where the debtor does business. In re Nickerson & Nickerson, Inc., 329 F. Supp. 93 (D. Neb. 1971), aff'd, 452 F.2d 56 (8th Cir. Neb. 1971).

A financing statement is sufficient if it indicates the types or describes the items of collateral. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

10. Description; particular applications.

In suit by debtor's receiver challenging bank's priority as perfected security interest holder and its concomitant right to take possession and dispose of secured collateral, UCC § 9-402 did not require bank to give notice to debtor's creditors that original security agreement was amended to increase amount of its loan and terms of repayment where increased loan was secured by same collateral originally described in financing statement. Heights v. Citizens Nat'l Bank, 463 Pa. 48, 342 A.2d 738 (1975).

In view of Code provisions in which only distinction between non-fixture and fixture financing statements was provision that in latter instance financing statement "must also contain description of real estate concerned," it must be concluded that legislature intended that real estate description be mandatory, and in its absence security interest in fixtures was not perfected so as to affect parties other than parties to transaction. Home Sav. Ass'n v. Southern Union Gas Co., 486 S.W.2d 386 (Tex. Civ. App. 1972), writ ref'd n.r.e., (Apr. 18, 1973).

11. —After-acquired property.

Description of collateral in financing statement as "all assets...regardless of type or description now owned...or to be bought (by debtor) in the future" did not satisfy requirements of UCC § 9-402(1), since such language was too general, vague, and misleading to fulfill the statute's requirement that financing statement must at least reveal the type of collateral in order to give subsequent secured parties adequate notice of creditor's security interest in the property that constitutes the collateral. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

Where security agreement was dated August 10 and financing statement describing collateral as "all accounts, contract rights and chattel paper now owned or hereafter acquired" was filed on August 11, second security agreement dated December 7, in which debtor agreed to delivery continuing guarantees from its principals in amount of $150,000 rather than $125,000 as provided in August 10 security agreement was perfected, and financing statement previously filed must be applied to it. Richmond Crane Rigging & Drayage Co. v. Liberty Nat'l Bank, 27 Cal. App. 3d 968 (1st Dist. 1972).

Financing statement covering "all equipment, cash registers...used in operating of service stations at...900 block South Main, Sapulpa, Oklahoma" included after-acquired property at service station even though statement did not contain an after-acquired property clause. American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okla. 1970).

Financing statement covering "motor vehicles" is sufficiently specific under Code § 9-402(1) to perfect security interest of bank loaning money on chattel mortgage for three named automobiles; adding words "after acquired", while advisable, is not necessary where debtor is retail auto agency obviously buying and selling autos. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

Where bank held a security interest in debtor's inventory and accounts receivable currently owned and thereafter to be acquired, the financing statement reasonably identified the collateral which was described as "inventory and accounts receivable," and the omission of the word "future" was immaterial. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

The description in a financing statement that the collateral is "inventory" is sufficient to warn prospective creditors of the borrower that it may well include after-acquired property. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

Where a finance company made a loan to a luncheonette owner who signed a security agreement conveying to the finance company as collateral the business together with all its good will, fixtures, equipment and merchandise, the agreement providing that the fixtures consisted of certain enumerated items "together with all property and articles now, and which may hereafter be, used or mixed with, added or attached to, and/or substituted for, any of the foregoing described property", and where the finance company filed a financing statement which set forth the specific items enumerated in the security agreement but made no reference to after-acquired property, and where subsequent to the filing of the financing statement a cash register was delivered to the luncheonette owner under a conditional sales agreement but no financing statement covering the cash register was filed by the seller within ten days after delivery, it was held that under the system of notice filing adopted by the Code, as disclosed by subsection (1) of the instant section, the financing company's financing statement gave adequate notice of its security agreement with the after-acquired property clause contained therein, and that the financing statement covered the cash register as after-acquired property even though the cash register was not specifically referred to either in the security agreement or in the financing statement. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

12. —Accounts receivable.

"Accounts receivable" is adequate financing statement description of EOA contract within UCC § 9-402. Security Tire & Rubber Co. v. Hlass, 246 Ark. 1113, 441 S.W.2d 91 (1969).

Properly filed financing statements describing collateral as "accounts receivable" adequately described debtor's contracts and accounts for purpose of perfecting security interest therein. Walker Bank & Trust Co. v. Smith, 88 Nev. 502, 501 P.2d 639 (1972).

Description of collateral as "inventory and accounts receivable", without including descriptive word "future", is sufficient under Code § 9-402(1). In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

13. —Accuracy of description of single item of collateral.

Where security agreement and financing statement described collateral as watch and also identified watch by brand and model number, description of collateral was sufficient under UCC § 9-110; where security agreement described second item of collateral as, "ladies' bridal set white gold," but financing statement described collateral as, "one ladies' bracelet set-white gold," description of collateral in security agreement was sufficient to create security interest but description in financing statement did not reasonably identify collateral and thus secured party did not have perfected security interest in bridal set. DWG, Inc. v. Peltier, 563 P.2d 152 (Okla. 1977).

Security agreement and financing statement adequately described collateral as required by UCC §§ 9-203, 9-402, and 9-110 where, although secured party had erroneously omitted first digit of identification number of automobile, omitted digit represented information previously described in words on each document. City Bank & Trust Co. v. Warthen Serv. Co., 91 Nev. 293, 535 P.2d 162 (1975).

Financing statement did not sufficiently describe drilling rig so as to reasonably notify plaintiff of existence of prior lien, where it contained no reference to self-propelling equipment, but, according to custom of industry, described merely stationary piece of equipment with deisel engine to operate it. Ray v. City Bank & Trust Co., 36 Ohio Misc. 83, 358 F. Supp. 630 (S.D. Ohio 1973).

Use of "COF" along with year and serial number was sufficient financing statement description of model of tractor known as "cab over tandum". In re Richards, 455 F.2d 281 (6th Cir. Mich. 1972).

Financing statement describing automobile by year, maker, and model was not fatally defective under Code § 9-402(1) because of one digit mistake in eleven digit serial number, since error was "not seriously misleading" within Code § 9-402(5). Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535 (L. Div. 1967).

The description of a caterpillar scraper by an incorrect serial number is sufficient in the absence of some physical description appearing of record in the security instrument which provides a key to the identity of the property. Yancey Bros. Co. v. Dehco, Inc., 108 Ga. App. 875, 134 S.E.2d 828 (1964).

14. —Crops.

Catfish raised by fish farmers did not qualify as "crop" for purpose of Section 75-9-203 and this section. Sunburst Bank v. Findley, 76 B.R. 547 (Bankr. N.D. Miss. 1987).

Where bank negligently failed to perfect its security interest in growing corn crop by omitting description of real estate as required by UCC § 9-402, thereby causing said collateral to be subordinated to interest of third party, this constituted an unjustifiable impairment of such collateral and served to discharge accommodation party from liability to extent of such impairment of collateral under UCC § 3-306. First Sec. Bank & Trust Co. v. Voelker (In re Estate of Voelker), 252 N.W.2d 400 (Iowa 1977).

Description of collateral as crops and "proceeds" from crops was sufficient to include federal subsidy payments to which debtor became entitled. In re Munger, 495 F.2d 511 (9th Cir. Cal. 1974).

In action between competing secured creditors over proceeds from debtor's crops, UCC § 9-402 requirement that collateral be adequately described was met where subsequent lender had actual knowledge of prior claim of security interest in debtor's property and crops; under UCC § 9-204(4), providing that no security interest attaches under after-acquired property clause to crops which become such more than one year after security agreement is executed, subsequent lender had burden of proving that crops in question were not planted until more than one year after original security agreement was executed. First Sec. Bank v. Wright, 521 P.2d 563 (Utah 1974).

Secured party was not entitled to recover from purchasers of crops covered by security agreement, where financing statement merely referred to debtor's 1967 peanut crop, which was in several counties on many different properties, and was insufficient to identify security described; although financing statement need not contain formal metes and bounds or other legal description of real property on which crops subject to security interests are grown, it must contain some description of real estate by which exact crops constituting secured property can be reasonably identified and any description which reasonably identifies "real estate" is sufficient to meet "notice filing" theory of UCC. First Nat'l Bank v. Calvin Pickle Co., 516 P.2d 265, 67 A.L.R.3d 302 (Okla. 1973).

Where financing statement and security agreement purportedly gave secured party security interest in all of debtor's crops, but contained accurate legal description of certain farm lands belonging to debtor and omitted 3 other parcels of land on which debtor planted and harvested crops, crop description was insufficient to put third person on notice under UCC. People's Bank v. Pioneer Food Indus., Inc., 253 Ark. 277, 486 S.W.2d 24 (1972).

Although §§ 9-402 and 9-110 were intended by legislature to require something less than legal description of land to apprise purchasers and creditors of security interest in growing crops, financing statement which described realty on which crops were raised as "land owned or leased by debtor in Cherokee County, Kansas" was insufficient to perfect security interest in such crops. Chanute Prod. Credit Ass'n v. Weir Grain & Supply, Inc., 210 Kan. 181, 499 P.2d 517 (1972).

15. —General terms of description.

UCC § 9-402 adopts a system of notice filing that is designed to replace rigid description requirements. Specifically, UCC § 9-402(5) provides that a financing statement that substantially complies with the requirements of UCC § 9-402 is effective, even though it contains minor errors that are not seriously misleading. However, although the description requirements have been made more liberal by subsection (5) of the statute, subsection (1) clearly requires some specificity of description. Thus, the financing statement must either indicate the type of collateral given or describe the particular item of which it consists. Mogul Enters., Inc. v.

Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Description of collateral in financing statement as "all assets...regardless of type or description now owned...or to be bought (by debtor) in the future" did not satisfy requirements of UCC § 9-402(1), since such language was too general, vague, and misleading to fulfill the statute's requirement that financing statement must at least reveal the type of collateral in order to give subsequent secured parties adequate notice of creditor's security interest in the property that constitutes the collateral. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Secured party's security interest in debtor's inventory was not perfected where description in financing statement required by UCC § 9-402(1) described collateral as "all accounts and contracts owned by the debtor or arising from the sale of inventory," since secured party could perfect security interest only in types of collateral listed on financing statement and under UCC § 9-105(1)(f), neither the term "accounts" nor the term "contracts" included inventory. Gulf Nat'l Bank v. Franke, 563 F.2d 766 (5th Cir. 1977).

Financing statement containing signatures of debtor and secured party, address of secured party, and containing description of collateral: "All Olivetti Corp. of America copying machines which have been delivered but not paid in full" met sufficiency test of description of collateral under UCC § 9-110 and formal requisites of financing statement under UCC § 9-402 and description reflected security interest under UCC § 1-201(37). First Nat'l Bank & Trust Co. v. Olivetti Corp. of Am., 130 Ga. App. 896, 204 S.E.2d 781 (1974).

Tools are ordinarily defined as implements used by hand, and use of words "tilling and harvesting tools" in financing statement did not accurately describe power-driven farm machinery such as mower, reaper, fertilizer, so as to perfect security interests in those items. In re Anselm, 344 F. Supp. 544 (W.D. Ky. 1972).

A filed financing statement covering "motor vehicles" is sufficiently specific under UCC § 9-402 to perfect the security interest of a bank loaning on a chattel mortgage for three named automobiles as opposed to an interest of the seller of the automobiles to receive payment for those cars because of a worthless check. Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc. 2d 113 (1968).

16. —General terms of description; "consumer goods."

Reclamation petition filed by secured creditor of bankrupt was improperly denied where financing statement describing collateral as all consumer goods and personal property of all kinds and description located at debtor's address was adequate under UCC § 9-402(1). In re Turnage, 493 F.2d 505 (5th Cir. Ala. 1974).

Use of term "consumer goods" is too broad, general, and meaningless to fulfill code mandate that financing statement indicates "types" of collateral; therefore, security interest of lender in tape deck, speaker, and 21-inch portable television was void. In re Lehner, 303 F. Supp. 317 (D. Colo. 1969), aff'd, 427 F.2d 357 (10th Cir. Colo. 1970).

17. —General terms of description; "equipment."

Under UCC § 9-402(1) and UCC § 9-110, term "farm equipment" was sufficiently specific description of tractor to perfect security interest therein of federal Farmers Home Administration (FHA), since any reasonable third party who might consider accepting tractor as collateral would receive ample notice from secured party's filed financing statement that further inquiry was in order. United States v. Crittenden, 563 F.2d 678 (5th Cir. Ga. 1977), reh'g denied, 568 F.2d 1368 (5th Cir. Ga. 1978), vacated on other grounds, 440 U.S. 715, 99 S. Ct. 1448, 59 L. Ed. 2d 711 (1979), on remand, 600 F.2d 478 (5th Cir. Ga. 1979).

General description of collateral, which consisted of debtor's farming equipment, in financing statement filed by bank as "all equipment now owned or hereafter acquired by debtor," without indicating location of such equipment or its nature as farming equipment, was inadequate under UCC § 9-402(1) and § 9-110, and did not perfect bank's lien in collateral, so as to render it superior to right to collateral of trustee in bankruptcy. In re Werth, 443 F. Supp. 738 (D. Kan. 1977).

Under UCC § 9-402(1), description in filed financing statement of equipment constituting collateral adequately described collateral where financing statement, although it did not refer to repairs, replacement parts, and accessions to collateral as did security agreement itself, did refer to "pallet-mill operation and manufacturing equipment." National Acceptance Co. of Am. v. Doede, 78 F.R.D. 333 (W.D. Wis. 1978).

Unlike a financing statement which is designed merely to put creditors on notice that further inquiry is prudent, a security agreement embodies the intentions of the parties and is the primary source to which a creditor's or potential creditor's inquiry is directed and must be reasonably specific; thus term "equipment" in omnibus clause of security agreement did not include automobiles owned by bankrupt corporation. In re Laminated Veneers Co., 471 F.2d 1124 (2d Cir. N.Y. 1973).

Where on financing statement read "logging equipment and machinery used in logging operations" and another financing statement read "new and used equipment for logging and general construction", descriptions were sufficient to describe property so as to create valid lien on log-loader in question. Mountain Credit v. Michiana Lumber & Supply, Inc., 31 Colo. App. 112, 498 P.2d 967 (1972).

Description, "equipment of all kinds", in financing statement was sufficiently informative as to constitute notice required by UCC § 9-402(1). Maryland Nat'l Bank v. Porter-Way Harvester Mfg. Co., 300 A.2d 8 (Del. 1972).

Financing statement covering "all equipment, cash registers…used in operating of service stations at…900 block South Main, Sapulpa, Oklahoma" included after-acquired property at service station even though statement did not contain an after-acquired property clause. American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okla. 1970).

18. —General terms of description; "personal property."

Description in financing statement, "all personal property", was not sufficient to perfect security interest against trustee in particular items of livestock and farm equipment set out in unrecorded security agreement. In re Fuqua, 330 F. Supp. 1050 (D. Kan. 1971), aff'd, 461 F.2d 1186 (10th Cir. Kan. 1972).

19. —Inventory.

In junior mortgagee's action for damages for defendant's alleged impairment of plaintiff's security, where defendant under security agreement with dealer in modular homes had security interest in all of dealer's present or future inventory and also first mortgage on 2.39 acres of land acquired by dealer for use as sales lot, on which dealer installed two modular homes; where plaintiff held second mortgage on dealer's 2.39 acres as security for loan on which dealer defaulted; and where defendant after dealer's default quickly removed modular homes from dealer's lot pursuant to written authorization from officer of dealer's company, (1) homes placed by dealer on sales lot, although installed on concrete foundations and connected to utilities, were inventory and not real property or fixtures under UCC § 9-109 (4), since they were goods intended for immediate or ultimate sale; (2) defendant held perfected purchase-money security interest in dealer's inventory under UCC § 9-401(1)(c) and UCC § 9-402(1), which under UCC § 9-312(3) took priority over plaintiff's junior-mortgage interest; and (3) defendant on dealer's default had right to take possession of homes on dealer's lot, since they were inventory collateral. Rakosi v. GECC, 59 A.D.2d 553 (2d Dep't 1977).

In voidable preference challenge between secured party and debtor-car dealer's trustee in bankruptcy, financing statement covering "sales and service of new and used automobiles" sufficiently described collateral under UCC §§ 9-402(1) and 9-110; security interest in after-acquired property was valid under UCC § 9-204 and after-acquired property was adequately described where commercially reasonable description of collateral contained within financing statement was equivalent to UCC § 9-109(4) definition of "inventory"; security interest in demonstrator models created pursuant to individual conditional sales agreements which debtor signed as both seller and buyer were valid under UCC §§ 9-303 and 9-306 and created purchase money security interest in favor of secured party which was subordinated to prior security interest in inventory collateral; dealer reserve account was integrated element of collateral securing inventory financing agreement and prior perfected security interest existed in that account which secured party could deem forfeited and duly transferred upon failure of security agreement's conditions. Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. Cal. 1973).

Description of collateral as "inventory and accounts receivable", without including descriptive word "future", is sufficient under Code § 9-402(1). In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

The description in a financing statement that the collateral is "inventory" is sufficient to warn prospective creditors of the borrower that it may well include after-acquired property. Evans Prods. Co. v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

§ 75-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

(a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 75-9-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 75-9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

SOURCES: Former 1972 Code § 75-9-505 [Codes, 1942, § 41A:9-505; Laws, 1966, ch. 316, § 9-505; Laws, 1977, ch. 452, § 35, eff from and after April 1, 1978] is now found in comparable provisions enacted at §§ 75-9-620, 75-9-621, and 75-9-624 by Laws, 2001, ch. 495, § 1. Present § 75-9-505 was derived from former 1972 Code § 75-9-408 [Laws, 1977, ch. 452, § 31, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-506. Effect of errors or omissions.

(a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 75-9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 75-9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of Section 75-9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

SOURCES: Former 1972 Code § 75-9-506 [Codes, 1942, § 41A:9-506; Laws, 1966, ch. 316, § 9-506, eff March 31, 1968] is now found in comparable provisions enacted at §§ 75-9-623 and 75-9-624 by Laws, 2001, ch. 495, § 1. Present § 75-9-506 was derived from former 1972 Code § 75-9-402 [Codes, 1942, § 41A:9-402; Laws, 1966, ch. 316, § 9-402; Laws, 1968, ch. 490, § 1; Laws, 1977, ch. 452, § 25, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1. [Reserved for future use.]
2. Use of other than debtor's legal name.
3.-5. [Reserved for future use.]

II. Under Former § 75-9-402(8).

6. Misspelling of debtor's name.
7. Misstatement of debtor's corporate or trade name.
8. Use of debtor's trade name only.
9. Misidentification of secured party.
10. Failure to identify owner of collateral.
11. Effect of debtor's change of name or corporate structure.
12. Minor errors.

I. Under Current Law.

1. [Reserved for future use.]

2. Use of other than debtor's legal name.

Even though defendant bank's financing statement used the individual debtor's nickname, not his legal name, the financing statement was not seriously misleading because plaintiff bank had actual knowledge that the individual was known by the nickname used in the financing statement, and the individual was identified by both names in numerous places in plaintiff bank's own files. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549 (5th Cir. 2007).

3.-5. [Reserved for future use.]

II. Under Former § 75-9-402(8).

6. Misspelling of debtor's name.

Misspelling of corporate debtor's name-"Ranelli" instead of "Ranalli"-on filed financing statement was seriously misleading and amounted to no filing at all, so that security interest was ineffective as to person in possession. John Deere Co. v. William C. Pahl Constr. Co., 59 Misc. 2d 872 (1969), aff'd, 34 A.D.2d 85, 310 N.Y.S.2d 945 (4 Dep't 1970).

A financing statement is insufficient when it spells the name of the debtor as Kaplan when in fact it is Kaplas. Bank of N. Am. v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535 (L. Div. 1967).

Under the provisions of subsection (5) of the instant section, a financing statement which substantially complies with the requirements of the section is sufficient even though it contains minor errors which are not seriously misleading. Thus, where the debtor was described as "Carroll, Edmund d/b/a Cozy Kitchen 574 Wash St Canton, Mass" and the word "Cozy" should have been "Kozy", it was held that the name of the debtor was accurately stated and the error in the name under which he did business was a minor error which was not seriously misleading. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

7. Misstatement of debtor's corporate or trade name.

Financing statement which fails to list the debtor's corporate name, and which gives only debtor's trade name, may nevertheless be sufficient if trade name is sufficiently similar to corporate name that it is not seriously misleading. Sencore, Inc. v. Pongetti (In re Columbus Typewriter Co.), 75 B.R. 834 (Bankr. N.D. Miss. 1987).

Identification of debtor, "Southern Supply Company of Greenville, N.C., Inc.," in financing statements as "Southern Supply Co." was not "seriously misleading" within meaning of UCC § 9-402(5), since identification was sufficient to put interested persons on notice of outstanding security interest. In re Southern Supply Co., 405 F. Supp. 20 (E.D.N.C. 1975).

Financing statement describing debtor as "Nara Dist. Inc." when in fact correct name of debtor was "Nara Non Food Distributing Inc." was sufficient as putting any interested person fairly on notice that there might be an outstanding lien against the Nara intended. In re Nara Non Food Distrib. Inc., 66 Misc. 2d 779 (1970), aff'd, 36 A.D.2d 796, 320 N.Y.S.2d 1014 (2d Dep't 1971).

Erroneous financing statement identification of secured party as "O. M. Scott Sons Co.", where even most basic inquiry to former would disclose that it was wholly owned subsidiary of latter, and would lead to full disclosure of exact state of affairs regarding asserted security interest. In re Colorado Mercantile Co., 299 F. Supp. 55 (D. Colo. 1969).

The insertion in a conditional sales contract of the purchaser's name as "Excel Department Stores" instead of its correct corporate title "Excel Stores, Inc." is a minor error not seriously misleading and does not affect the validity of the instrument. In re Excel Stores, Inc., 341 F.2d 961 (2d Cir. Conn. 1965).

8. Use of debtor's trade name only.

Secured party's financing statements were sufficient under UCC § 9-402 to perfect security interest in debtor's equipment, notwithstanding filing officer filed and indexed financing statements only under trade name of debtor, Kaw Lake Cement, and not under his true name, Joseph Arthur Fowler, where each financing statement named three debtors, Kaw Lake Cement, Jerry A. Fowler and J. A. Fowler. McMillin v. First Nat'l Bank & Trust Co., 407 F. Supp. 799 (W.D. Okla. 1975).

Financing statement which did not contain name of bankrupt debtor, but instead contained name of business that debtor was engaged in, was not in substantial compliance with Code. In re Thomas, 310 F. Supp. 338 (N.D. Cal. 1970), aff'd, 466 F.2d 51 (9th Cir. Cal. 1972).

9. Misidentification of secured party.

Although the Uniform Commercial Code clearly contemplates and sanctions "floating collateral" (after-acquired property of debtor) and "floating debt" (future advances), it does not contemplate "floating secured parties" — that is, an open-ended class of creditors with unsecured and unperfected interests who, after the debtor's bankruptcy, can assign their claims to a more senior lienor and magically secure and perfect their interests under an omnibus security agreement and financing statement. To allow "floating secured parties" would clearly be at odds with the "simple notice" requirements of UCC § 9-402 and would undercut perfection requirement of Article 9, which reflects UCC policy against secret security. Republic Nat'l Bank v. Fitzgerald, 565 F.2d 366 (5th Cir. Tex. 1978).

Financing statement which identified the debtor, an individual named Henry Platt, as Platt Fur Co., an unregistered fictitious name for debtor's business, was not "seriously misleading" and did not prejudice the perfection of the creditor's claim. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

10. Failure to identify owner of collateral.

In action to recover possession of motor home that plaintiff secured party had sold to debtor under retail installment contract and security agreement, where (1) plaintiff, although authorized to file financing statement, did not do so before assigning installment contract and security agreement to bank, (2) after contract and security agreement had been assigned to bank, debtor transferred title to home to third-party purchaser, (3) such purchaser resold home to another third party who, in turn, resold it to defendant, (4) after first third-party purchaser had purchased home, bank filed financing statement that listed only original buyer of home as "debtor," and (5) on original buyer's default in making payments, bank reassigned installment contract and security agreement to plaintiff, which sought to replevy home from last third-party purchaser, court held (1) that even though bank was aware that title to home had been transferred to first third-party purchaser, bank nevertheless, on filing its financing statement, listed only original buyer as "debtor" on such statement, (2) that financing statement, as a result, failed under UCC §§ 9-402(1) and 9-105(1)(d) to identify "debtor" properly in situation where owner of collateral and obligor on financing agreement were not the same person, (3) that plaintiff's security interest was therefore not perfected, and (4) that since defendant third-party purchaser had purchased home out of ordinary course of business and without knowledge of plaintiff's unperfected security interest therein, defendant's ownership of home was free of such security interest under UCC § 9-301(1)(c). White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Under UCC § 9-402(1), a financing statement must include the name and address of the debtor. In this connection, however, the term "debtor" is defined by UCC § 9-105(1)(d) to include both the owner of the collateral and the obligor on the financing agreement if the owner and the obligor are not the same person. White Star Distribs., Inc. v. Kennedy, 66 A.D.2d 1011 (4th Dep't 1978).

Use of nominee was legitimate under Uniform Commercial Code; thus, recording of financing statement was entirely proper dispite fact that principal creditor's nominee, rather than principal creditor, was named as secured party. In re Cushman Bakery, 526 F.2d 23 (1st Cir. Me. 1975), cert. denied, 425 U.S. 937, 96 S. Ct. 1670, 48 L. Ed. 2d 178 (1976).

Although owner of property permitted debtor to use it as collateral for loan from secured party and valid security interest attached in favor of secured party under security agreement given by debtor, secured party failed to properly perfect its interest in that financing statement it filed did not contain any reference to owner of collateral; in view of provision of UCC § 9-105(1)(d), that term "debtor" may include both owner of collateral and obligor if context so requires, UCC § 9-402, subdivisions (1) and (3), requiring that financing statement contain "debtor's" name, must be construed as referring to both actual debtor and owner of collateral, thus requiring both names on financing statement to perfect security interest. K.N.C. Whsle., Inc. v. AWMCO, Inc., 56 Cal. App. 3d 315, 99 A.L.R.3d 473 (1st Dist. 1976).

11. Effect of debtor's change of name or corporate structure.

In action by finance corporation against bank involving conflicting security interests in same automobile, where (1) dealer's invoice recited sale of automobile to wife and provided that she would pay $1,400 down and finance balance with plaintiff, (2) wife and husband executed (a) promissory note evidencing loan in amount of $2,995 from defendant, of which $1,400 was used as down payment for automobile and balance represented preexisting debt owed to defendant, and (b) security agreement which designated automobile as security for such loan, (3) husband, on giving dealer $1,400 down payment for automobile, executed installment sale contract in husband's name only in favor of dealer, which dealer assigned to plaintiff, (4) defendant on August 9, 1972 filed financing statement that designated both husband and wife as debtors, (5) plaintiff on August 10, 1972 filed financing statement that designated only husband as debtor, (6) husband defaulted on payments due plaintiff, and (7) both husband and wife defaulted on note given to defendant, court held (1) installment sale contract assigned to plaintiff served as security agreement under UCC § 9-203(1)(b) and plaintiff acquired valid security interest in automobile, (2) plaintiff's security interest in automobile validly attached under UCC § 9-204(1), since husband had "right" in automobile as matter of law and could use it for collateral, even though wife was vehicle's registered owner, (3) under UCC § 9-402(1) and § 9-105(1)(d) financing statement filed by plaintiff was defective, since it only listed husband as "debtor" and did not refer to wife who actually owned automobile, (4) defendant's security interest validly attached when both husband and wife signed security agreement granting security interest in automobile to defendant, (5) defendant's financing statement complied with UCC § 9-402(1), since it was signed by both husband and wife, and thus defendant's security interest in automobile was perfected, and (6) since defendant gave "value" under UCC § 1-201(44)(b) by taking security interest in automobile to secure defendant's preexisting claim, defendant's perfected security interest in vehicle extended to entire amount of defendant's loan to husband and wife, and such perfected security interest was superior to plaintiff's unperfected security interest. GMAC v. Washington Trust Co., 120 R.I. 197, 386 A.2d 1096, 3 A.L.R.4th 496 (1978).

Secured party apparently has duty under second sentence of UCC § 9-402(7) to monitor identity of debtor. Thus, secured party must take steps to insure that it will become aware of any changes of name, identity, or corporate structure of its debtor within four months after such change or else risk losing its perfected security interest in collateral acquired after that time, should the financing statement be found to be seriously misleading at time of the change. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Where (1) debtors, after secured party had perfected security interest in debtors' business fixtures, equipment, merchandise, inventory, and after-acquired property, transferred such collateral to corporation formed by debtors to operate business under new name, (2) corporation two and a half years later became bankrupt, (3) at time of such bankruptcy, merchandise and inventory of the business was not the same as that owned by original debtors when security interest was acquired by secured party, and (4) bankruptcy trustee claimed that under UCC § 9-402(7), secured party had only unsecured claim to proceeds from sale of corporation's inventory and merchandise acquired after four-month period following transfer of original inventory and merchandise to corporation, since such transfer involved change in the business' ownership and name that was seriously misleading, court held (1) that secured party did not have to file new financing statement within four months following such transfer in order to retain its perfected security interest in the after-acquired property, (2) that transfer situation was governed by third sentence of UCC § 9-402(7), and (3) that if any creditors had checked the corporation's source of title, they could easily have discovered the corporation's assumption of notes which were in the original debtors' individual names and, by running a check on those names, have found the secured party's filed financing statement. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Under UCC § 9-402, creditor, as holder of prior secured interest against debtor, did not have affirmative duty to amend or refile financing statement to reflect name change of debtor from "South Haven Fruit Exchange" to "Blossom Trail Growers, Inc." in order to preserve its superior interest over subsequent creditor which had perfected its security interest against "Blossom Trail Growers, Inc." Continental Oil Co. v. Citizens Trust & Sav. Bank, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

Where financing statement was properly filed and debtor subsequently changed its corporate name, secured party was not under obligation to refile its financing statement to reflect such change of name notwithstanding secured party had knowledge of the change. Continental Oil Co. v. Citizens Trust & Sav. Bank, 57 Mich. App. 1, 225 N.W.2d 209 (1974), aff'd, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

Where secured party had perfected purchase money security interest in television equipment which it sold to debtor, subsequent transfer of all assets and liabilities of debtor corporation to newly formed corporation having same shareholders, officers and directors as debtor did not constitute "sale, exchange, or other disposition" of secured property within meaning of UCC § 9-306(2); thus, financing statement which was properly filed continued to be effective after transfer of assets and liabilities, although no amendment to financing statement was made to reflect change in name of debtors, where name change was minor and not seriously misleading, and financing statement was accurate in every other detail. In re Kittyhawk Tel. Corp., 75 Ohio Op. 2d 469, 516 F.2d 24 (6th Cir. Ohio 1975).

Where secured party entered into security agreement with partnership engaged in appliance business, covering "all present inventory belonging to the Dealer as well as any and all subsequently acquired inventory," where partnership assets were subsequently transferred to newly formed corporation, and where new financing statement was filed under name of partnership but was not filed with reference to corporation as debtor, security agreement containing after-acquired property clause was effective against newly-formed corporation and secured party's security interest extended to inventory subsequently acquired by corporation; fact that financing statement was filed under partnership name, "Clint's Appliance Sales and Service," rather than corporate name, "Clint's Appliance Sales and Service, Inc.," would not cause secured party's security interest to be unprotected against either corporation or trustee in bankruptcy; but, even if it could be said that financing statement was in some way misleading, under UCC § 9-402(7) (1972 Official Text) secured party's security interest remained perfected under its financing statement with partnership at least four months after partnership changed its "name, identity or corporate structure." Fliegel v. Associates Capital Co., 272 Or. 434, 537 P.2d 1144 (1975).

Secured creditor who had knowledge at time of execution of security agreement that debtor contemplated at future time changing its name to particular new name, but who nevertheless proceeded to extend credit knowing that original filing of financing statement would not reflect change and would therefore mislead and deceive potential creditors and purchasers, forfeited his protected interest when change of name occurred. In re Kalamazoo Steel Process, Inc., 503 F.2d 1218 (6th Cir. Mich. 1974).

In action between secured party and trustee in bankruptcy over rights to forestry equipment in possession of secured party, financing statement signed by corporation, whose separate existence had already ended by merger at time of signing, was sufficient to perfect security interest of corporation into which it was merged under UCC § 9-402 since statement was sufficient to put potential creditors on notice of prior security interest. In re Wilco Forest Mach., Inc., 491 F.2d 1041 (5th Cir. Ala. 1974).

In dispute between assignee for benefit of creditors and bank claiming security interest in proceeds from sale of collateral, bank held superior interest under UCC § 9-301(3) where, under New York version of UCC § 9-402, change of name of debtor firm did not affect perfection of filing made under former name, regardless of whether bank had knowledge of change of name. In re Pasco Sales Co., 77 Misc. 2d 724 (1974).

12. Minor errors.

UCC § 9-402 adopts a system of notice filing that is designed to replace rigid description requirements. Specifically, UCC § 9-402(5) provides that a financing statement that substantially complies with the requirements of UCC § 9-402 is effective, even though it contains minor errors that are not seriously misleading. However, although the description requirements have been made more liberal by subsection (5) of the statute, subsection (1) clearly requires some specificity of description. Thus, the financing statement must either indicate the type of collateral given or describe the particular item of which it consists. Mogul Enters., Inc. v. Commercial Credit Bus. Loans, Inc., 92 N.M. 215, 585 P.2d 1096 (1978).

Holder of security interest in form of chattel mortgage on herd of cattle took priority over holder of judgment lien who attempted to levy execution on cattle, although financing statement filed by secured party omitted signature and also omitted addresses of both secured party and debtor: (1) lack of secured party's signature from financing statement was minor error and financing statement with that omission, nevertheless, was in substantial compliance with UCC § 9-402(1); and (2) absence of addresses of both debtor and secured party did not render financing statement ineffectual where all parties involved were residents of same small town, holder of judgment lien knew both debtor and secured party and where each of them lived, and there was no showing of prejudice to holder of judgment lien. Riley v. Miller, 549 S.W.2d 314, 100 A.L.R.3d 385 (Ky. Ct. App. 1977).

Filing requirements of Georgia Uniform Commercial Code are analogous to requirements for certificate-of-title applications under Georgia Motor Vehicle Certificate of Title Act, since both laws require filing of security interests to give notice to both future creditors of debtor and to potential buyers of collateral involved. Roberts v. International Harvester Credit Corp., 143 Ga. App. 206, 237 S.E.2d 697 (1977).

Filing of financing statement under assumed trade name was effective unless it was misleading to creditors. Siljeg v. National Bank of Commerce, 509 F.2d 1009 (9th Cir. Wash. 1975).

Identification of debtor, "Southern Supply Company of Greenville, N.C., Inc.," in financing statements as "Southern Supply Co." was not "seriously misleading" within meaning of UCC § 9-402(5), since identification was sufficient to put interested persons on notice of outstanding security interest. In re Southern Supply Co., 405 F. Supp. 20 (E.D.N.C. 1975).

Failure of finance company to check box opposite provision that debtor had signed security agreement authorizing finance company to file statement was minor error which could not seriously mislead one who searched file; held, financing statement was effective. Beneficial Fin. Co. v. Kurland Cadillac-Oldsmobile, Inc., 32 A.D.2d 643 (2d Dep't 1969).

Individual's signature on financing statement, without any indication that he had signed as representative of debtor corporation was "not seriously misleading" within Code § 9-402(5), where financing statement was filed solely under corporate name; where corporation had as part of its name surname of signor; and where no prior financing statements executed by signor or changes in corporate organization might mislead third parties. Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966).

Where the names of the mortgagors and mortgagees and their respective addresses were typed in the appropriate boxes appearing in the form of financing statement, and the statement is signed by the mortgagors at the bottom of the form, the absence of the mortgagee's signature constituted only a minor error which was not seriously misleading. Benedict v. Lebowitz, 346 F.2d 120 (2d Cir. Conn. 1965).

The insertion in a conditional sales contract of the purchaser's name as "Excel Department Stores" instead of its correct corporate title "Excel Stores, Inc." is a minor error not seriously misleading and does not affect the validity of the instrument. In re Excel Stores, Inc., 341 F.2d 961 (2d Cir. Conn. 1965).

Under the provisions of subsection (5) of the instant section, a financing statement which substantially complies with the requirements of the section is sufficient even though it contains minor errors which are not seriously misleading. Thus, where the debtor was described as "Carroll, Edmund d/b/a Cozy Kitchen 574 Wash St Canton, Mass" and the word "Cozy" should have been "Kozy", it was held that the name of the debtor was accurately stated and the error in the name under which he did business was a minor error which was not seriously misleading. NCR v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963).

In Sales Finance Corp. v. McDermott Appliance Co. (1960) 340 Mass 493, 165 NE2d 119, it was said that the decision of the court that a minor variation in the name of the trustee in a statement of trust receipt financing filed under the former Uniform Trust Receipts Act did not render the statement ineffective was consonant with the provision of subsection (5) of the instant section that a financing statement substantially complying with the requirements of the section is effective even though it contains minor errors which are not seriously misleading. Sales Fin. Corp. v. McDermott Appliance Co., 340 Mass. 493, 165 N.E.2d 119 (1960).

§ 75-9-507. Effect of certain events on effectiveness of financing statement.

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and Section 75-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 75-9-506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 75-9-503(a) so that the financing statement becomes seriously misleading under Section 75-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after the financing statement becomes seriously misleading.

SOURCES: Former 1972 Code § 75-9-507 [Codes, 1942, § 41A:9-507; Laws, 1966, ch. 316, § 9-507, eff March 31, 1968] is now found in comparable provisions enacted at §§ 75-9-625 and 75-9-627 by Laws, 2001, ch. 495, § 1. Present § 75-9-507 was derived from former 1972 Code § 75-9-402 [Codes, 1942, § 41A:9-402; Laws, 1966, ch. 316, § 9-402; Laws, 1968, ch. 490, § 1; Laws, 1977, ch. 452, § 25, eff from and after April 1, 1978] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 14, eff from and after July 1, 2013.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-402(7).

6. Effect of debtor's change of name or corporate structure.
7. Security agreement as financing statement.
8. Relationship between financing statement and security agreement.
9. Effect of refinancing.
10. Amendment or continuation of security agreement.
11. Assignment of security interest of priority.
12. Transfer of collateral by debtor.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-402(7).

6. Effect of debtor's change of name or corporate structure.

In action by finance corporation against bank involving conflicting security interests in same automobile, where (1) dealer's invoice recited sale of automobile to wife and provided that she would pay $1,400 down and finance balance with plaintiff, (2) wife and husband executed (a) promissory note evidencing loan in amount of $2,995 from defendant, of which $1,400 was used as down payment for automobile and balance represented preexisting debt owed to defendant, and (b) security agreement which designated automobile as security for such loan, (3) husband, on giving dealer $1,400 down payment for automobile, executed installment sale contract in husband's name only in favor of dealer, which dealer assigned to plaintiff, (4) defendant on August 9, 1972 filed financing statement that designated both husband and wife as debtors, (5) plaintiff on August 10, 1972 filed financing statement that designated only husband as debtor, (6) husband defaulted on payments due plaintiff, and (7) both husband and wife defaulted on note given to defendant, court held (1) installment sale contract assigned to plaintiff served as security agreement under UCC § 9-203(1)(b) and plaintiff acquired valid security interest in automobile, (2) plaintiff's security interest in automobile validly attached under UCC § 9-204(1), since husband had "right" in automobile as matter of law and could use it for collateral, even though wife was vehicle's registered owner, (3) under UCC § 9-402(1) and § 9-105(1)(d) financing statement filed by plaintiff was defective, since it only listed husband as "debtor" and did not refer to wife who actually owned automobile, (4) defendant's security interest validly attached when both husband and wife signed security agreement granting security interest in automobile to defendant, (5) defendant's financing statement complied with UCC § 9-402(1), since it was signed by both husband and wife, and thus defendant's security interest in automobile was perfected, and (6) since defendant gave "value" under UCC § 1-201(44)(b) by taking security interest in automobile to secure defendant's preexisting claim, defendant's perfected security interest in vehicle extended to entire amount of defendant's loan to husband and wife, and such perfected security interest was superior to plaintiff's unperfected security interest. GMAC v. Washington Trust Co., 120 R.I. 197, 386 A.2d 1096, 3 A.L.R.4th 496 (1978).

Secured party apparently has duty under second sentence of UCC § 9-402(7) to monitor identity of debtor. Thus, secured party must take steps to insure that it will become aware of any changes of name, identity, or corporate structure of its debtor within four months after such change or else risk losing its perfected security interest in collateral acquired after that time, should the financing statement be found to be seriously misleading at time of the change. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Where (1) debtors, after secured party had perfected security interest in debtors' business fixtures, equipment, merchandise, inventory, and after-acquired property, transferred such collateral to corporation formed by debtors to operate business under new name, (2) corporation two and a half years later became bankrupt, (3) at time of such bankruptcy, merchandise and inventory of the business was not the same as that owned by original debtors when security interest was acquired by secured party, and (4) bankruptcy trustee claimed that under UCC § 9-402(7), secured party had only unsecured claim to proceeds from sale of corporation's inventory and merchandise acquired after four-month period following transfer of original inventory and merchandise to corporation, since such transfer involved change in the business' ownership and name that was seriously misleading, court held (1) that secured party did not have to file new financing statement within four months following such transfer in order to retain its perfected security interest in the after-acquired property, (2) that transfer situation was governed by third sentence of UCC § 9-402(7), and (3) that if any creditors had checked the corporation's source of title, they could easily have discovered the corporation's assumption of notes which were in the original debtors' individual names and, by running a check on those names, have found the secured party's filed financing statement. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Under UCC § 9-402, creditor, as holder of prior secured interest against debtor, did not have affirmative duty to amend or refile financing statement to reflect name change of debtor from "South Haven Fruit Exchange" to "Blossom Trail Growers, Inc." in order to preserve its superior interest over subsequent creditor which had perfected its security interest against "Blossom Trail Growers, Inc." Continental Oil Co. v. Citizens Trust & Sav. Bank, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

Where financing statement was properly filed and debtor subsequently changed its corporate name, secured party was not under obligation to refile its financing statement to reflect such change of name notwithstanding secured party had knowledge of the change. Continental Oil Co. v. Citizens Trust & Sav. Bank, 57 Mich. App. 1, 225 N.W.2d 209 (1974), aff'd, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

Where secured party entered into security agreement with partnership engaged in appliance business, covering "all present inventory belonging to the Dealer as well as any and all subsequently acquired inventory," where partnership assets were subsequently transferred to newly formed corporation, and where new financing statement was filed under name of partnership but was not filed with reference to corporation as debtor, security agreement containing after-acquired property clause was effective against newly-formed corporation and secured party's security interest extended to inventory subsequently acquired by corporation; fact that financing statement was filed under partnership name, "Clint's Appliance Sales and Service," rather than corporate name, "Clint's Appliance Sales and Service, Inc.," would not cause secured party's security interest to be unprotected against either corporation or trustee in bankruptcy; but, even if it could be said that financing statement was in some way misleading, under UCC § 9-402(7) (1972 Official Text) secured party's security interest remained perfected under its financing statement with partnership at least four months after partnership changed its "name, identity or corporate structure." Fliegel v. Associates Capital Co., 272 Or. 434, 537 P.2d 1144 (1975).

Where secured party had perfected purchase money security interest in television equipment which it sold to debtor, subsequent transfer of all assets and liabilities of debtor corporation to newly formed corporation having same shareholders, officers and directors as debtor did not constitute "sale, exchange, or other disposition" of secured property within meaning of UCC § 9-306(2); thus, financing statement which was properly filed continued to be effective after transfer of assets and liabilities, although no amendment to financing statement was made to reflect change in name of debtors, where name change was minor and not seriously misleading, and financing statement was accurate in every other detail. In re Kittyhawk Tel. Corp., 75 Ohio Op. 2d 469, 516 F.2d 24 (6th Cir. Ohio 1975).

In dispute between assignee for benefit of creditors and bank claiming security interest in proceeds from sale of collateral, bank held superior interest under UCC § 9-301(3) where, under New York version of UCC § 9-402, change of name of debtor firm did not affect perfection of filing made under former name, regardless of whether bank had knowledge of change of name. In re Pasco Sales Co., 77 Misc. 2d 724 (1974).

Secured creditor who had knowledge at time of execution of security agreement that debtor contemplated at future time changing its name to particular new name, but who nevertheless proceeded to extend credit knowing that original filing of financing statement would not reflect change and would therefore mislead and deceive potential creditors and purchasers, forfeited his protected interest when change of name occurred. In re Kalamazoo Steel Process, Inc., 503 F.2d 1218 (6th Cir. Mich. 1974).

In action between secured party and trustee in bankruptcy over rights to forestry equipment in possession of secured party, financing statement signed by corporation, whose separate existence had already ended by merger at time of signing, was sufficient to perfect security interest of corporation into which it was merged under UCC § 9-402 since statement was sufficient to put potential creditors on notice of prior security interest. In re Wilco Forest Mach., Inc., 491 F.2d 1041 (5th Cir. Ala. 1974).

7. Security agreement as financing statement.

Although it is evident under UCC § 9-402 that one instrument may qualify as both security agreement and financing statement, from which it follows that financing statement may also constitute security agreement if it otherwise qualifies as such, where parties executed only promissory note in standard form and short form financing statements and where neither financing statements nor note manifested intent to create or provide for security interest, there was no security agreement as required by UCC § 9-203 and thus creditor did not acquire security interest. Crete State Bank v. Lauhoff Grain Co., 195 Neb. 605, 239 N.W.2d 789 (1976).

Chattel mortgage may serve both as "security agreement" and "financing statement" under Nebraska UCC, provided it complies with requirements for said instruments, and contains necessary information, as set out in UCC; under UCC § 9-402, there are 2 formal requisites of "financing statement", i.e., (1) signatures and addresses of both parties, and (2) description of collateral by type or item, and financing statement substantially complying with these requirements is effective even though it contains minor errors which are not seriously misleading; address of secured party to be set out in financing statement under UCC § 9-402 must be such address as to enable one interested in searching records to contact party in question for purpose of obtaining information concerning security interest, i.e., address must be sufficiently complete to enable prudent person using reasonable care to locate secured party, and question of sufficiency of address of secured creditor is question of fact; thus, where chattel mortgage filed as financing statement gave address of secured party as "Omaha, Nebraska," and there was nothing in record from which court could determine whether secured creditor was or was not listed in Omaha city directory or in Omaha telephone book, or whether any of interested parties had knowledge of address of secured creditor, or any other information which would have facilitated contacting secured creditor, address was insufficient to comply with requirements of UCC § 9-402. Mid-America Dairymen, Inc. v. Newman Grove Coop. Creamery Co., 191 Neb. 74, 214 N.W.2d 18 (1974).

Notice of sale agreement filed as financing statement satisfied Code § 9-402(1) requirement even though not indicating that there was underlying security interest involved. Rooney v. Mason, 394 F.2d 250 (10th Cir. Wyo. 1968).

Lack of secured party's signature on chattel mortgage filed as financing statement does not make statement defective under Code § 9-402(1). Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

An instrument denominated as a "chattel mortgage" may be filed as a financing statement so long as it contains the necessary information. Strevell-Paterson Fin. Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

A conditional sales contract in proper form and timely filed with correct recording office has been filed in compliance with this section even though recorder erroneously returned instrument for an acknowledgment. In re Mutual Bd. & Packaging Corp., 342 F.2d 294 (2d Cir. N.Y. 1965).

A chattel mortgage on bowling alley equipment, although unsigned by the debtor as is required by this section, was held valid as a financing statement when filed, and the court commented upon the detailed nature of the information contained in the instrument and observing that § 1-102 requires a liberal interpretation of the Commercial Code added that a period of indulgence should be granted in connection with cases raising under the code. Alloway v. Stuart, 385 S.W.2d 41 (Ky. 1964).

8. Relationship between financing statement and security agreement.

In action by one secured party to replevy common debtor's inventory collateral from defendant second secured party, where (1) defendant's security agreement was executed on June 9, 1975, and defendant thereunder immediately took possession of debtor's inventory collateral, which consisted of automobile parts and accessories, (2) plaintiff previously, on December 15, 1972, had filed financing statement, in which it listed itself as creditor and same person as debtor, which provided that such statement covered debtor's inventory of automobile parts and accessories, (3) plaintiff thereafter executed security agreement with debtor on December 28, 1972 which granted plaintiff continuing security interest in such inventory to secure (a) capital loan note, (b) certain other existing liabilities, including a wholesale account of indebtedness, and (c) all future advances, (4) debtor was constantly indebted to plaintiff from December, 1972, even though debtor fully repaid capital loan note on May 14, 1975, and (5) defendant claimed that since capital loan note (that is, the original indebtedness) had been fully repaid before date on which defendant's security interest attached, plaintiff had ceased to have security interest in debtor's inventory, court held (1) that since UCC § 9-204(3) clearly provides that obligations covered by a security agreement may include future advances, plaintiff's security agreement, because it covered future advances, was still effective, (2) that plaintiff was not required by UCC § 9-402(1) to file second financing statement to give notice of debtor's wholesale account of indebtedness, since UCC § 9-402(1) merely states that financing statement may be filed before security agreement is made or security interest otherwise attaches, which is what had occurred in the present case, and (3) that under UCC § 9-312(5)(a), because plaintiff had filed its financing statement before filing of defendant's financing statement, plaintiff's lien on debtor's collateral was superior to that of defendant. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

That the financing statement may be filed prior to the making of a security agreement, and that a security interest need not be in existence at the time the financing statement is filed, is clearly contemplated under the provisions of this section. In re United Thrift Stores, Inc., 242 F. Supp. 714 (D.N.J. 1965), aff'd, 363 F.2d 11 (3d Cir. N.J. 1966).

9. Effect of refinancing.

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Where financing statement covering first loan to debtor was filed and four subsequent refinancing loans were made with no new filing, each subsequent loan being secured by chattel mortgages on same property that served as collateral for first loan, security interests covering subsequent loans were perfected, even though financing statement was on file before security interests in subsequent loans attached; fundamental and reiterated policy of code is that sequence of steps necessary for perfection is immaterial. In re Rivet, 299 F. Supp. 374 (E.D. Mich. 1969).

There is no requirement that when a loan is refinanced that a new financing statement must be filed and the former statement cancelled for the reason that the filing statement is not a lien which is discharged by refinancing but is merely a notice that there is some security interest in the designated collateral. Hence the original statement stands and continues the priority of the security interest for the benefit of the refinanced obligation. HFC v. Bank Comm'r, 248 Md. 233, 235 A.2d 732 (1967).

10. Amendment or continuation of security agreement.

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Security agreement entered into in February, 1974, which created valid security interest as between debtor and bank with respect to debtor's accounts receivable, was perfected by existence of record of financing statement, first filed in 1959 and kept current by timely filed continuation statements, filed at regular intervals (in each case just short of five years), showing debtor's accounts receivable as collateral, notwithstanding there were intervals when debtor owed bank nothing, during which time no security interest existed, and that from 1972 to February, 1974, parties did not intend bank's loans to be secured; duly filed financing statement, showing same debtor, same secured party, and same collateral, serves to perfect security interest created in transaction other than that for which financing statement was originally filed. In re Gilchrist Co., 403 F. Supp. 197 (E.D. Pa. 1975), aff'd, 535 F.2d 1246 (3d Cir. Pa. 1976).

In dispute between assignee for benefit of creditors and bank claiming security interest in proceeds from sale of collateral, bank held superior interest under UCC § 9-301(3) where, under New York version of UCC § 9-402, change of name of debtor firm did not affect perfection of filing made under former name, regardless of whether bank had knowledge of change of name. In re Pasco Sales Co., 77 Misc. 2d 724 (1974).

Secured creditor with security interest in crops grown during 1971 on two tracts of land, one owned by debtor and other leased by him, took priority over purported attaching creditor, claiming under writ of attachment issued November 11, 1971, with respect to proceeds from sale of crops, notwithstanding security agreement covering both tracts of land was not filed until November 12, 1971: (1) With respect to "leased" tract, where original financing statement covering crops growing or to be grown thereon was filed on July 5, 1966, security agreement covering 1971 crops on both "leased" and "owned" tracts was executed on February 18, 1971, and continuation statement was filed on June 28, 1971, security interest was perfected by filing of continuation statement prior to issuance of attaching creditor's purported attachment and levy thereunder, and took priority over any rights acquired by attaching creditor; (2) with respect to "owned" land, although secured party's security interest was not perfected by filing as of time of levy under attaching creditor's purported attachment, evidence showed that attaching creditor either had actual notice of secured party's interest in crops or could be charged with actual knowledge or duty to secure knowledge of secured party's interest, and, thus, secured party's unperfected security interest took priority over rights of attaching creditor. Gulf Oil Co. United States v. First Nat'l Bank, 503 S.W.2d 300 (Tex. Civ. App. 1973).

A careful reading of UCC § 9-402(4) does not compel a finding that the financing statement must be amended when the security agreement is altered. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

It was not necessary for agreement to provide for extension or renewal of indebtedness in order that creditor have valid security interest in property covered by security agreement where maker had executed and delivered security agreement to payee containing no provision for renewal or extension of note, financing statement containing no maturity date was filed, maker made payment on original note and executed and delivered to payee renewal note which recited date of original loan and also referred to collateral for original loan, and maker failed to pay note when it became due. In re Cantrill Constr. Co., 418 F.2d 705 (6th Cir. Ky. 1969), cert. denied, 397 U.S. 990, 90 S. Ct. 1124, 25 L. Ed. 2d 398 (1970).

11. Assignment of security interest of priority.

In receivership proceedings involving conflicting petitions to reclaim assets of insolvent corporation, secured party which had loaned money to insolvent and had performed every act required by law to obtain perfected security interest in all of insolvent's receivables, including filing of financing statement pursuant to UCC §§ 9-302(1), 9-304(1), and 9-402(1), had priority over all unsecured general creditors, including investors in the insolvent corporation who held debentures and notes which stated on their face that they were subordinate to claims of all other contract creditors. Coastal Fin. Corp. v. Coastal Fin. Corp., 120 R.I. 317, 387 A.2d 1373 (1978).

Plaintiff's security interest in all present and future Medicaid and Medicare accounts receivable of ambulance company, which plaintiff perfected on May 11, 1972 by filing financing statement in accordance with UCC § 9-402, had priority over state tax warrant for sum owed by ambulance company for employee income-withholding taxes, which warrant was filed on October 8, 1975 and under which state tax department had levied on Medicaid payments owed to ambulance company by county department of social services. In such case, priority of plaintiff's security-interest lien was not affected by state statute providing that assignment of claim of supplier of medical assistance was invalid as against any social services district since such statute, although prohibiting enforcement of plaintiff's assignment against any social services district, did not prohibit enforcement of such assignment as against any other person. IMFC Professional Servs., Inc. v. State, 59 A.D.2d 1047 (4th Dep't 1977).

Where 1966 loan was secured by assignment of contract right, where financing statement filed in 1966 was in compliance with UCC § 9-402(1) and where secured party made subsequent loans to debtor in 1967 and 1968, even if 1966 and 1967 notes did not contain future advance clauses, secured party maintained position of perfected secured creditor with respect to 1968 loan which was also secured by assignment of contract rights covered by 1966 note and financing statement. In re Estate of Gruder, 89 Misc. 2d 477 (1977).

Where automobile dealer sold automobile under retail instalment contract and assigned contract to bank with unconditional guarantee of payment, automobile dealer was subrogated to rights of bank in collateral, and where UCC § 9-402 required filing of financing statement in order to perfect security interest in such collateral, and where both parties failed to file such financing statement, dealer was entitled to be discharged to extent of any loss sustained by reason of bank's failure to file statement. First Nat'l Bank v. Haugen Ford, Inc., 219 N.W.2d 847 (N.D. 1974).

12. Transfer of collateral by debtor.

Where (1) bank advanced loan guaranteed by Federal Small Business Administration, to owner of business, (2) bank secured loan by perfected security interest in all of debtor's furniture, fixtures, machinery, and equipment, (3) bank filed financing statement which listed debtor's corporation as debtor, and (4) such corporation, without knowledge or consent of bank or SBA as secured creditors, sold collateral subject to creditors' security interest to second corporation which became bankrupt and had its assets sold at public auction, court held (1) that bankruptcy judge committed error in ruling that although bank and SBA did not impliedly or expressly consent to transfer of collateral to second corporation, failure of bank and SBA to file financing statement naming second corporation as debtor rendered bank's and SBA's previously perfected security interest ineffective against second corporation, and (2) that under Cal UCC § 9-306(2), stating that security interest continues in collateral notwithstanding its sale by debtor unless disposition was authorized by secured party, and Cal UCC § 9-402(6), providing that filed financing statement remains effective with respect to collateral transferred by debtor, even though secured party knows of or consents to such transfer, security interest of bank and SBA clearly survived subsequent transfer of collateral to second corporation. United States v. Ocean Elecs. Corp., 451 F. Supp. 511 (S.D. Cal. 1978).

"Collateral" as used in third and final sentence of UCC § 9-402(7) is not limited as it is in the second sentence, where it is defined as that collateral acquired by debtor more than four months after change in debtor's name. Instead, the final sentence speaks of collateral transferred by the debtor, which must mean the property subject to the security interest. The final sentence is clear that the filed statement remains effective with respect to collateral transferred by debtor, regardless of knowledge or consent of secured party. This also means collateral which consists of after-acquired property. In re Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977).

Where vendee of automobile, who was debtor of secured party who had failed to file financing statement under Code § 9-402, resold automobile to vendor, such subsequent sale vested title to automobile in vendor, superior to any claim of third party. Dunford v. Columbus Auto Auction, Inc., 114 Ga. App. 407, 151 S.E.2d 464 (1966).

§ 75-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.

(a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under Section 75-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four (4) months after, the new debtor becomes bound under Section 75-9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four (4) months after the new debtor becomes bound under Section 75-9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 75-9-507(a).

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Cross References — General effectiveness of security agreement, see § 75-9-201.

§ 75-9-509. Persons entitled to file a record.

(a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under Section 75-9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under Section 75-9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 75-9-315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Section 75-9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one (1) secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-510. Effectiveness of filed record.

(a) A filed record is effective only to the extent that it was filed by a person that may file it under Section 75-9-509.

(b) A record authorized by one (1) secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by Section 75-9-515(d) is ineffective.

(d) A filed record ceases to be effective if the Secretary of State terminates the record pursuant to Section 75-9-501.1.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 382, § 2, eff from and after July 1, 2013.

§ 75-9-511. Secured party of record.

(a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 75-9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 75-9-514(b), the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-512. Amendment of financing statement.

(a) Subject to Section 75-9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed for record in a filing office described in Section 75-9-501(a)(1), provides the date that the initial financing statement was filed for record and the information specified in Section 75-9-502(b).

(b) Except as otherwise provided in Section 75-9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

SOURCES: Derived from former 1972 Code § 75-9-402 [Codes, 1942, § 41A:9-402; Laws, 1966, ch. 316, § 9-402; Laws, 1968, ch. 490, § 1; Laws, 1977, ch. 452, § 25, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-402(4).

6. Amendment or continuation of security agreement.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-402(4).

6. Amendment or continuation of security agreement.

An appropriate financing statement under UCC § 9-402(1) may perfect security interests that secure advances made under agreements not contemplated at the time the financing statement was filed, even if the filed advances then contemplated should be fully repaid in the interim. Under the code's notice-filing procedures, the filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, regardless of whether the security agreement involved is one that was in existence at the date of such filing, with either an after-acquired property clause or a future-advances clause, or whether the involved security agreement is one that was executed later on. Chrysler Credit Corp. v. Community Banking Co., 35 Conn. Supp. 73, 395 A.2d 727 (1978).

Security agreement entered into in February, 1974, which created valid security interest as between debtor and bank with respect to debtor's accounts receivable, was perfected by existence of record of financing statement, first filed in 1959 and kept current by timely filed continuation statements, filed at regular intervals (in each case just short of five years), showing debtor's accounts receivable as collateral, notwithstanding there were intervals when debtor owed bank nothing, during which time no security interest existed, and that from 1972 to February, 1974, parties did not intend bank's loans to be secured; duly filed financing statement, showing same debtor, same secured party, and same collateral, serves to perfect security interest created in transaction other than that for which financing statement was originally filed. In re Gilchrist Co., 403 F. Supp. 197 (E.D. Pa. 1975), aff'd, 535 F.2d 1246 (3d Cir. Pa. 1976).

In dispute between assignee for benefit of creditors and bank claiming security interest in proceeds from sale of collateral, bank held superior interest under UCC § 9-301(3) where, under New York version of UCC § 9-402, change of name of debtor firm did not affect perfection of filing made under former name, regardless of whether bank had knowledge of change of name. In re Pasco Sales Co., 77 Misc. 2d 724 (1974).

Secured creditor with security interest in crops grown during 1971 on two tracts of land, one owned by debtor and other leased by him, took priority over purported attaching creditor, claiming under writ of attachment issued November 11, 1971, with respect to proceeds from sale of crops, notwithstanding security agreement covering both tracts of land was not filed until November 12, 1971: (1) With respect to "leased" tract, where original financing statement covering crops growing or to be grown thereon was filed on July 5, 1966, security agreement covering 1971 crops on both "leased" and "owned" tracts was executed on February 18, 1971, and continuation statement was filed on June 28, 1971, security interest was perfected by filing of continuation statement prior to issuance of attaching creditor's purported attachment and levy thereunder, and took priority over any rights acquired by attaching creditor; (2) with respect to "owned" land, although secured party's security interest was not perfected by filing as of time of levy under attaching creditor's purported attachment, evidence showed that attaching creditor either had actual notice of secured party's interest in crops or could be charged with actual knowledge or duty to secure knowledge of secured party's interest, and, thus, secured party's unperfected security interest took priority over rights of attaching creditor. Gulf Oil Co. United States v. First Nat'l Bank, 503 S.W.2d 300 (Tex. Civ. App. 1973).

A careful reading of UCC § 9-402(4) does not compel a finding that the financing statement must be amended when the security agreement is altered. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).

It was not necessary for agreement to provide for extension or renewal of indebtedness in order that creditor have valid security interest in property covered by security agreement where maker had executed and delivered security agreement to payee containing no provision for renewal or extension of note, financing statement containing no maturity date was filed, maker made payment on original note and executed and delivered to payee renewal note which recited date of original loan and also referred to collateral for original loan, and maker failed to pay note when it became due. In re Cantrill Constr. Co., 418 F.2d 705 (6th Cir. Ky. 1969), cert. denied, 397 U.S. 990, 90 S. Ct. 1124, 25 L. Ed. 2d 398 (1970).

§ 75-9-513. Termination statement.

(a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) Within one (1) month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty (20) days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a), within twenty (20) days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 75-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 75-9-510, for purposes of Sections 75-9-519(g), 75-9-522(a) and 75-9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

SOURCES: Derived from former 1972 Code § 75-9-404 [Codes, 1942, § 41A:9-404; Laws, 1966, ch. 316, § 9-404; Laws, 1977, ch. 452, § 27; Laws, 1978, ch. 401, § 1; Laws, 1985, ch. 381, § 2, eff from and after July 1, 1985] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Filing requirements to secure payment of oil or gas royalty proceeds, see § 53-3-41.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-404.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-404.

6. In general.

Official Comments to UCC § 9-404(1) make it clear that termination statements are for benefit of debtors and that they are not required to terminate the financing arrangements. In re Apollo Travel, Inc., 567 F.2d 841 (8th Cir. Minn. 1977).

Secured party was under no duty to give personal notice to debtor that secured party had terminated security interest in automobile, since UCC § 9-404(1) does not provide for such notification to debtor in absence of written demand to creditor. Ford Motor Credit Co. v. Gibson, 566 S.W.2d 154 (Ky. Ct. App. 1977).

Where seller sold four trucks to buyer in 1969, obtained execution of four separate security agreements (one for each truck) for purchase price of trucks and related costs, and perfected four separate security interests in trucks by filing, but such security agreements did not specifically subject collateral (the four trucks) to any future advances that might be made by seller to buyer; where bank in 1971 made loan to purchaser of such trucks, took security interest in all equipment then or thereafter owned by purchaser, and also perfected such security interest by filing; where purchaser's obligation to pay seller purchase price of trucks and related costs had been satisfied when bank took possession of trucks and sold them; and where proceeds of such sale were not sufficient to make whole either bank or seller, (1) bank's security agreement entitled it to priority over all collateral (trucks) and proceeds of sale thereof, since seller's prior security agreements did not clearly secure certain future advances-allowed by UCC § 9-204(5)-that were later made by seller to purchaser and all of purchaser's debts to seller, except for such future advances, had been satisfied and seller's security agreements were no longer in effect when bank took possession of proceeds of sale of collateral; (2) bank's priority over collateral and proceeds of sale thereof were not affected by fact that seller's filed financing statements, which were filed when its 1969 security agreements were made, were never released by seller, since UCC § 9-406 does not impose duty to file such release in absence of written demand therefor by debtor to creditor under UCC § 9-404; and (3) bank, at time it took possession of trucks, was entitled to possession by virtue of its security interest and thus was not guilty of conversion of proceeds of sale. Texas Kenworth Co. v. First Nat'l Bank, 564 P.2d 222 (Okla. 1977).

Where the debtor under a chattel mortgage had paid off the entire obligation, but the holder of the paper refused to send a statement that he no longer claimed a security interest under the document, the debtor was not restricted to the rights afforded to her by the Uniform Commercial Code and could properly pursue the remedy given her by § 414(2) of the Personal Property Law which permitted her to recover the amount equal to the credit service charge imposed by the transaction. Tyler v. Eastern Disct. Corp., 55 Misc. 2d 1002 (1968).

RESEARCH REFERENCES

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws § 149 et seq.

68A Am. Jur. 2d, Secured Transactions § 349 et seq.

Termination statement, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:671-9:674.

Termination statement, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2120 through 253:2124.

CJS. 76 C.J.S., Records § 69 et seq.

§ 75-9-514. Assignment of powers of secured party of record.

(a) Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under Section 75-9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code.

SOURCES: Derived from former 1972 Code § 75-9-405 [Codes, 1942, § 41A:9-405; Laws, 1966, ch. 316, § 9-405; Laws, 1968, ch. 491, § 1; Laws, 1977, ch. 452, § 28; Laws, 1985, ch. 381, § 3, eff from and after July 1, 1985] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Filing requirements to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Recording of assignments of mortgages, etc., see §§ 89-5-15, 89-5-17.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-405.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-405.

6. In general.

Proper filing of financing statement under UCC § 9-405(1) which disclosed on face assignment of security interest in ice cream store equipment fixed status of assignee as secured party of record with priority of interest over that of lien creditor under UCC § 9-301 who, after judgment for unpaid rent, attached property and requested sale thereof with full knowledge of assignee's claim to equipment. Marco Fin. Co. v. Solbert Indus., Inc., 534 S.W.2d 469 (Mo. Ct. App. 1975).

Neither assignee nor assignor of real estate mortgage complied with statute concerning assignment of security interest; held, this failure did not affect rights of assignee's receiver against debtors. Ragge v. Bryan, 249 Ark. 164, 458 S.W.2d 403 (1970).

RESEARCH REFERENCES

Am Jur. 6A Am. Jur. 2d, Assignments § 71.

66 Am. Jur. 2d, Records and Recording Laws §§ 54 et seq., 149 et seq.

68A Am. Jur. 2d, Secured Transactions §§ 234-236, 286.

By assignee of secured party, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:673.

Assignment of security interest, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2125, 253:2126.

CJS. 79 C.J.S. Secured Transactions § 134.

6A C.J.S., Assignments § 78.

76 C.J.S., Records §§ 13, 69 et seq.

§ 75-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five (5) years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six (6) months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in Section 75-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 75-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

SOURCES: Derived from former 1972 Code § 75-9-403 [Codes, 1942, § 41A:9-403; Laws, 1966, ch. 316, § 9-403; Laws, 1977, ch. 452, § 26; Laws, 1978, ch. 401, § 8; Laws, 1979, ch. 369; Laws, 1985, ch. 381, § 1; Laws, 1987, ch. 373, eff from and after July 1, 1987] and enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 15, eff from and after July 1, 2013.

Cross References — Filing requirements to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Application of this section to filing or refiling of federal tax liens, see § 85-8-9.

Recording of deeds and conveyances, see §§ 89-5-1 to 89-5-5.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-403.

A. Decisions Under Uniform Commercial Code.

6. In general.
7. Date of filing.
8. Indexing of financing statement.
9. Effect of name change after filing.
10. Duration of financing statement.
11. Continuation statement.
12. Effect of lapsed financing statement.
13. Other matters.

B. Decisions Under Former Statutes.

14. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-403.

A. Decisions Under Uniform Commercial Code.

6. In general.

Sections 65 and 70 of the New York Personal Property Law which provide the effect and method of filing conditional sales contracts have now been superseded by §§ 9-402 and 9-403(1) of the UCC. In re Mutual Bd. & Packaging Corp., 342 F.2d 294 (2d Cir. N.Y. 1965).

A conditional sales contract in proper form and timely filed with correct recording office has been filed in compliance with this section even though recorder erroneously returned instrument for an acknowledgment. In re Mutual Bd. & Packaging Corp., 342 F.2d 294 (2d Cir. N.Y. 1965).

The purpose of filing a financial statement is to give notice to potential future creditors of the debtor or purchasers of the collateral. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

The Uniform Commercial Code does not require that the secured party as listed in a financing statement be a principal creditor and not an agent. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 399 Pa. 643, 161 A.2d 19 (1960).

7. Date of filing.

Date stamp and filing number on financing statement were prima facie evidence of filing with city register's office on that date, notwithstanding evidence that on later date financing statement temporarily could not be found; debtor's contention that secured party had duty to insure proper filing and indexing was without merit. In re May Lee Indus., Inc., 380 F. Supp. 1 (S.D.N.Y. 1974), aff'd, 501 F.2d 1407 (2d Cir. N.Y. 1974).

8. Indexing of financing statement.

Presentation of financing statement to, and its acceptance by, filing officer constitutes filing under UCC § 9-403(1), and secured party is not insurer of proper indexing of statement by filing officer. In re Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977), rev'd on other grounds, 614 F.2d 399 (5th Cir. 1980).

Under Mississippi UCC § 9-403(4), clerk's duty is simply to index names of debtors as they are listed by creditor on financing statement, and clerk is under no duty to index debtors' names as they appear on signature line of financing statement. In re Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977), rev'd on other grounds, 614 F.2d 399 (5th Cir. 1980).

9. Effect of name change after filing.

Secured creditor who had knowledge at time of execution of security agreement that debtor contemplated at future time changing its name to particular new name, but who nevertheless proceeded to extend credit knowing that original filing of financing statement would not reflect change and would therefore mislead and deceive potential creditors and purchasers, forfeited his protected interest when change of name occurred. In re Kalamazoo Steel Process, Inc., 503 F.2d 1218 (6th Cir. Mich. 1974).

Where financing statement was properly filed and debtor subsequently changed its corporate name, secured party was not under obligation to refile its financing statement to reflect such change of name notwithstanding secured party had knowledge of the change. Continental Oil Co. v. Citizens Trust & Sav. Bank, 57 Mich. App. 1, 225 N.W.2d 209 (1974), aff'd, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

10. Duration of financing statement.

Failure of creditor with perfected purchase money security interest to renew original filing relegated creditor to standing of unperfected secured creditor; creditor did not reperfect its purchase money lien upon repossession of collateral, due to 20-day perfection requirement. United States v. Williams, 82 B.R. 430 (Bankr. N.D. Miss. 1988).

Creditor's filing of financing statement without debtor's signature, several months subsequent to lapse of original financing statement, was sufficient to renew perfection of security interest effective as of date of filing of second financing statement, however, the creditor was not protected during interim period between date of lapse and date of refiling. In re Abell, 66 B.R. 375 (Bankr. N.D. Miss. 1986).

In action between creditors for possession of debtors' (husband and wife) collateral, where (1)(a) plaintiff creditor's security agreement, which did not provide for future advances, covered debtors' household furnishings, (b) plaintiff properly filed financing statement on December 20, 1973, (c) debt was fully paid on November 8, 1974, and (d) plaintiff did not file termination statement, (2) defendant creditor's security agreement covered essentially the same property, and defendant properly filed financing statement on January 3, 1975, (3)(a) plaintiff creditor, on July 11, 1975, December 1, 1975, and

July 2, 1976, made new loans to debtors, (b) debtors executed new security agreements covering same collateral first pledged in 1973, and (c) plaintiff relied on December 20, 1973 financing statement, (4) debtors filed petition in bankruptcy on September 23, 1976, and (5) defendant creditor, on September 30, 1976, seized property covered by both plaintiff's and defendant's perfected security interests, court held (1) that all loans made by plaintiff and defendant, except plaintiff's July 2, 1976 loan, were governed by pre-1972 UCC § 9-312(5)(a), which determined priority between conflicting security interests in same collateral by order of filing if both were perfected by filing, (2) under pre-1972 UCC § 9-312(5)(a), plaintiff's security interest in collateral for plaintiff's July 11, 1975 and December 1, 1975 loans, which was perfected at time such loans were made, had priority over defendant's security interest in the same collateral because plaintiff was the first to file, (3) such priority was not affected by fact that plaintiff's original loan, which was covered by plaintiff's filed financing statement of December 20, 1973, had been paid off, since under pre-1972 UCC § 9-403(2), a financing statement specifying no maturity date was effective for five years from date of its filing, and debtors had not requested that they be sent a termination statement, (4) under UCC § 9-312(7), which was added to Uniform Commercial Code in 1972, plaintiff's July 2, 1976 advance had same priority as plaintiff's December 1, 1975 advance, thus giving plaintiff's July 2, 1976 loan priority over defendant's loan, (5) since only one of the debtors-the wife-had properly signed plaintiff's December 20, 1973 financing statement, plaintiff's security interest had priority over defendant's security interest only to extent of wife's interest in the collateral, and (6) conversely, defendant's security interest in property of husband, and also in property of wife that was not listed in plaintiff's December 20, 1973 financing statement, had priority over plaintiff's security interest under pre-1972 UCC § 9-301(1)(a) and § 9-312(5)(a). Provident Fin. Co. v. Beneficial Fin. Co., 36 N.C. App. 401, 245 S.E.2d 510 (1978), cert. denied, 295 N.C. 549, 248 S.E.2d 728 (1978).

A perfected security interest in automobile or in chattel paper relating thereto can last no longer than 5 years from date of filing under UCC § 9-403(2). Commercial Credit Corp. v. National Credit Corp., 251 Ark. 702, 473 S.W.2d 881 (1971).

11. Continuation statement.

Where (1) debtor on June 24, 1974 obtained loan from creditor which was secured by security agreement covering debtor's accounts receivable, (2) creditor filed financing statement that contained expiration date of September 25, 1974, (3) creditor subsequently extended time for payment of loan but did not file timely continuation statement to extend expiration date of original financing statement, with result that under Colorado UCC § 9-403(2), original financing statement lapsed and creditor's security interest became unperfected on November 24, 1974 (60 days after expiration date specified in original financing statement), (4) debtor on December 26, 1974 repaid creditor part of amount due on loan, (5) creditor on February 24, 1975 filed late continuation statement under Colorado UCC § 9-403(3), (6) creditor on March 21, 1975 acted to recover some of debtor's accounts receivable, and (7) debtor was adjudicated bankrupt on April 10, 1975 and bankruptcy trustee sought to avoid creditor's December, 1974 and March, 1975 transactions with debtor on ground that they were preferential transfers because they were not made within four months of filing of debtor's bankruptcy petition, creditor, who admitted that transaction were chronologically within such four-month period, could not successfully defend transactions by contending that under "perfection" test of bankruptcy laws, creditor's security interest had remained continuously perfected, under special provisions of Colorado UCC § 9-403(3) dealing with effect of failure to file timely continuation statement, from June 24, 1974 and that transfers must thus be deemed to have been made on such date (that is, more than four months before debtor's bankruptcy petition) because no other creditors had actually acquired any rights against debtor during interim period that preceded creditor's filing of late continuation statement. In such case, although procedure to be followed in perfecting security interest in property of a bankrupt debtor is determined by state law, time when perfection becomes effective against bankruptcy trustee is determined by federal law, and in present case, express requirement of bankruptcy law that interests of both potential and actual creditors of bankrupt debtor must be considered in determining whether a given transfer is perfected as against bankruptcy trustee could not be nullified, as contended by creditor, by fact that Colorado courts would interpret Colorado UCC § 9-403(3) to give priority only to those creditors who actually acquired rights against debtor during interim period between lapse of original financing statement and late filing of continuation statement. In re Vodco Volume Dev. Co., 567 F.2d 967 (10th Cir. Colo. 1977), appeal dismissed, cert. denied, 439 U.S. 806, 99 S. Ct. 62, 58 L. Ed. 2d 98 (1978).

UCC § 9-403(3) requires filing of continuation statement within six months' period prior to expiration of five-year period during which original financing statement is effective; thus, where bank filed continuation statement almost two years prior to prescribed period, filing was premature and did not extend effective date of original financing statement beyond its expiration date. In re Callahan Motors, Inc., 396 F. Supp. 785 (D.N.J. 1975), rev'd, 538 F.2d 76 (3rd Cir. N.J. 1976), cert. denied, 429 U.S. 987, 97 S. Ct. 507, 50 L. Ed. 2d 598 (1976).

Secured creditor with security interest in crops grown during 1971 on two tracts of land, one owned by debtor and other leased by him, took priority over purported attaching creditor, claiming under writ of attachment issued November 11, 1971, with respect to proceeds from sale of crops, notwithstanding security agreement covering both tracts of land was not filed until November 12, 1971, with respect to "leased" tract, where original financing statement covering crops growing or to be grown thereon was filed on July 5, 1966, security agreement covering 1971 crops on both "leased" and "owned" tracts was executed on February 18, 1971, and continuation statement was filed on June 28, 1971, security interest was perfected by filing of continuation statement prior to issuance of attaching creditor's purported attachment and levy thereunder, and took priority over any rights acquired by attaching creditor. Gulf Oil Co. United States v. First Nat'l Bank, 503 S.W.2d 300 (Tex. Civ. App. 1973).

Filing of new financing statement which was substantially rewrite of original loan and which did not identify original statement by file number or state that original financing statement was still effective could not be viewed as substantial compliance with Code requirement that continuation statement be filed. Eastern Ind. Prod. Credit Ass'n v. Farmers State Bank, 31 Ohio App. 2d 252, 287 N.E.2d 824 (1972).

Because the garnishee chose to insert the maturity date of the obligation as a "demand" obligation, which apparently is made optional at most by UCC § 9-402(1), a continuation statement was not necessary in order to maintain perfection until five years has elapsed from the date of the initial filing. Mid-Eastern Elecs., Inc. v. First Nat'l Bank, 455 F.2d 141 (4th Cir. Md. 1970).

12. Effect of lapsed financing statement.

Failure of creditor with perfected purchase money security interest to renew original filing relegated creditor to standing of unperfected secured creditor; creditor did not reperfect its purchase money lien upon repossession of collateral, due to 20-day perfection requirement. United States v. Williams, 82 B.R. 430 (Bankr. N.D. Miss. 1988).

Where effectiveness of secured party's filed financing statement lapsed after passage of period prescribed by UCC § 9-403(2) because no continuation statement was timely filed under UCC § 9-403(3), secured party's security interest in reserve account fund became unperfected and was subordinate to federal tax liens against debtor that antedated date on which secured party subsequently reperfected his security interest in fund by filing new financing statement. GECC v. Isaacs, 90 Wash. 2d 234, 581 P.2d 1032 (1978).

A perfected security interest which lapses under UCC 9-403(2) becomes unperfected as against all other interests, including those perfected security interests which were previously junior to it, and is therefore junior to any perfected security interest. Morse Electro Prods. Corp. v. Beneficial Indus. Loan Co., 90 Wash. 2d 195, 579 P.2d 1341 (1978).

In estate administration proceeding, where (1) deceased, on purchase of pharmacy, gave seller promissory note secured by security agreement that was duly filed in county clerk's office on December 1, 1971 and with secretary of state of New York on December 2, 1971, (2) filed instruments reflected maturity date of November 15, 1981, (3) decedent left unpaid balance on promissory note given seller, and (4) seller did not renew his security interest by filing continuation statement, as provided by UCC § 9-403(2), on or before December 2, 1976 (which was expiration of 5-year period specified by UCC § 9-403(2)), court held that seller forfeited his preferred standing and became mere general creditor of deceased. In re Estate of Sweeney, 95 Misc. 2d 22 (1978).

A creditor of a decedent, who had duly filed a security agreement but failed to renew his security interests by failing to file renewal certificates, as required by section 9-403 of the Uniform Commercial Code, which provides that the effectiveness of a filing statement lapses on the expiration of a five-year period unless a continuation statement is filed prior to the lapse, thereby forfeited his secured and preferred standing and became a general creditor with respect to the assets of decedent's estate. In re Estate of Sweeney, 95 Misc. 2d 22 (1978).

Buyer who purchased goods subject to security interest perfected by filing of financing statement would take priority over secured party after financing statement lapsed provided buyer was without notice at time of expiration of financing statement. United States v. Squires, 378 F. Supp. 798 (S.D. Iowa 1974).

13. Other matters.

Typewritten signature of secured creditor on continuation statement is sufficient where continuation statement clearly imparted notice of potential security interest, identified secured party, and was executed with present intent to authenticate; financing statements are properly filed when they are presented to filing clerk and filing fees paid; if filing officer jeopardizes rights of creditor by rejecting tendered document later held to be proper and legally sufficient, loss is not attributable to creditor; better practice for filing officers is to file documents they deem questionable and then notify filing party of possible defects. Multi-Mart Branch Office, First State Bank v. Appliance Buyers Credit Corp., 757 F.2d 1573 (5th Cir. 1985).

While both the time of filing rule and the time of attachment rule have merit, neither rule furthers the important policy of providing notice to subsequent creditors of the prior existing security interest as well as a rule based upon the last event; by requiring that the determination of the proper place to file be made at the time when the last event occurs upon which the perfection of the creditor's security interest is based, the last event rule insures that the place in which the filing is made and the contents of the filing will reflect any changes made by the debtor between the time of attachment and the time of filing, regardless of which came first. The filer would be more likely to reflect the location and status of the debtor which exists at the time a subsequent creditor is searching the records to determine what prior security interests have been perfected against the debtor and therefore will be more likely to be found by such a subsequent creditor. Accordingly, the secured party must determine the correct place in which to file his financing statement on the basis of the facts existing at the time when the last event necessary for the perfection of his security interests occurs. Borg-Warner Acceptance Corp. v. Fedders Fin. Corp., 614 F.2d 399 (5th Cir. 1980).

Under evidence that the debtor had signed a security agreement authorizing the filing of a financing statement without her signature, that the motor vehicle was covered by the security agreement, and that the debtor had signed and delivered a promissory note to plaintiff, the fact that finance company failed to check the box opposite the provision that the debtor had signed a security agreement authorizing plaintiff to file the financing statement was a minor error which could not seriously mislead one who searched the file. Beneficial Fin. Co. v. Kurland Cadillac-Oldsmobile, Inc., 32 A.D.2d 643 (2d Dep't 1969).

The assignment in a building subcontractor's performance bond, to his surety, of all sums due and to become due to the subcontractor under his contract with the primary contractor, in the event of any abandonment, forfeiture, or breach of the subcontract by the subcontractor, was a "contract right" under § 9-301, and where not perfected under §§ 9-302 and 9-403 by appropriate recording, was invalid against a lien creditor, including a trustee in bankruptcy, from the date of the filing of the petition; hence, the surety was relegated to the status of a general creditor, with no lien on funds owing from the contractor to the bankrupt and paid into court. United States ex rel. Greer v. G.P. Fleetwood & Co., 165 F. Supp. 723 (W.D. Pa. 1958).

B. Decisions Under Former Statutes.

14. In general.

Where the financing statements were presented to the chancery clerk, the filing fees paid, and the statements recorded, they constituted constructive notice to a lien creditor of the trustee under the provisions of subsection 4, despite the fact that they were incorrectly indexed under the name of the finance company rather than under the name of the automobile dealer. Murdock Acceptance Corp. v. Woodham, 208 So. 2d 56 (Miss. 1968).

ATTORNEY GENERAL OPINIONS

Subsection (3) of this section permits a chancery clerk to remove a lapsed financing statement from the files and destroy same immediately after one year after the financing statement has lapsed, unless such financing statement has been continued by a continuation statement or is still effective under subsection (6) of this section. Miller, May 21, 1999, A.G. Op. #99-0238.

RESEARCH REFERENCES

ALR. Registration of mortgages or other liens on personal property in case of residents of other states. 10 A.L.R.2d 764.

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws §§ 54 et seq., 149 et seq.

68A Am. Jur. 2d, Secured Transactions §§ 256, 328, 332, 336.

5A Am. Jur. Pl & Pr Forms (Rev), Chattel Mortgages, Forms 21 et seq. (filing or recording).

6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:651-9:653, 9:661 (what constitutes filing financing and continuation statements).

19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2118, 253:2119 (duration and renewal of filing).

CJS. 79 C.J.S., Secured Transactions § 50 et seq.

76 C.J.S., Records §§ 13, 69 et seq.

Law Reviews. 1978 Mississippi Supreme Court Review: Commercial Law. 50 Miss. L. J. 41, March 1979.

1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss L. J. 741, December 1979.

§ 75-9-516. What constitutes filing; effectiveness of filing.

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by Section 75-9-512 or 75-9-518, as applicable;

(ii) Identifies an initial financing statement whose effectiveness has lapsed under Section 75-9-515; or

(iii) Identifies an initial financing statement which was terminated pursuant to Section 75-9-501.1;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) In the case of a record filed in the filing office described in Section 75-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(3.5) In the case of an initial financing statement or an amendment, if the Secretary of State believes in good faith that the record was communicated to the filing office in violation of Section 75-9-501.1(a);

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor; or

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) In the case of an assignment reflected in an initial financing statement under Section 75-9-514(a) or an amendment filed under Section 75-9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 75-9-515(d).

(c) For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 75-9-512, 75-9-514 or 75-9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

SOURCES: Derived from former 1972 Code § 75-9-403 [Codes, 1942, § 41A:9-403; Laws, 1966, ch. 316, § 9-403; Laws, 1977, ch. 452, § 26; Laws, 1978, ch. 401, § 8; Laws, 1979, ch. 369; Laws, 1985, ch. 381, § 1; Laws, 1987, ch. 373, eff from and after July 1, 1987] and enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 382, § 3; Laws, 2013, ch. 451, § 16, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 3 of ch. 382, Laws of 2013, effective July 1, 2013 (approved March 20, 2013), amended this section. Section 16 of ch. 451, Laws of 2013, effective July 1, 2013 (approved March 25, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

ATTORNEY GENERAL OPINIONS

The secretary of state may lawfully promulgate a rule requiring that Uniform Commercial Code filings not contain any SSN's and providing for rejection when they do. Anderson, July 28, 2006, A.G. Op.# 06-0348.

§ 75-9-517. Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-518. Claim concerning inaccurate or wrongfully filed record.

(a) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the information statement relates to a record filed for record in a filing office described in Section 75-9-501(a)(1), the date that the initial financing statement was filed for record and the information specified in Section 75-9-502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 75-9-509(d).

(d) An information statement under subsection (c) must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the information statement relates to a record filed in a filing office described in Section 75-9-501(a)(1), the date and time that the initial financing statement was filed and the information specified in Section 75-9-502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 75-9-509(d).

(e) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 17, eff from and after July 1, 2013.

SUBPART 2.

DUTIES AND OPERATION OF FILING OFFICE.

SEC.
75-9-519. Numbering, maintaining, and indexing records; communicating information provided in records.
75-9-520. Acceptance and refusal to accept record.
75-9-521. Uniform form of written financing statement and amendment.
75-9-522. Maintenance and destruction of records.
75-9-523. Information from filing office; sale or license of records.
75-9-524. Delay by filing office.
75-9-525. Fees.
75-9-526. Filing-office rules.
75-9-527. Duty to report.

§ 75-9-519. Numbering, maintaining, and indexing records; communicating information provided in records.

(a) For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e).

(b) Except as provided in subsection (i), a file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under Section 75-9-514(a) or an amendment filed under Section 75-9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and:

(A) If the filing office is described in Section 75-9-501(a)(1), by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed for record; or

(B) If the filing office is described in Section 75-9-501(a)(2), by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one (1) year after the effectiveness of a financing statement naming the debtor lapses under Section 75-9-515 with respect to all secured parties of record.

(h) Except as provided in subsection (i), the filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two (2) business days after the filing office receives the record in question.

(i) Subsections (b) and (h) do not apply to a filing office described in Section 75-9-501(a)(1).

SOURCES: Derived from former 1972 Code §§ 75-9-403 [Codes, 1942, § 41A:9-403; Laws, 1966, ch. 316, § 9-403; Laws, 1977, ch. 452, § 26; Laws, 1978, ch. 401, § 8; Laws, 1979, ch. 369; Laws, 1985, ch. 381, § 1; Laws, 1987, ch. 373, eff from and after July 1, 1987] and 75-9-405 [Codes, 1942, § 41A:9-405; Laws, 1966, ch. 316, § 9-405; Laws, 1968, ch. 491, § 1; Laws, 1977, ch. 452, § 28; Laws, 1985, ch. 381, § 3, eff from and after July 1, 1985] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-520. Acceptance and refusal to accept record.

(a) A filing office shall refuse to accept a record for filing for a reason set forth in Section 75-9-516(b) and may refuse to accept a record for filing only for a reason set forth in Section 75-9-516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in Section 75-9-501(a)(1), in no event more than two (2) business days after the filing office receives the record.

(c) A filed financing statement satisfying Section 75-9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, Section 75-9-338 applies to a filed financing statement providing information described in Section 75-9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one (1) debtor, this part applies as to each debtor separately.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-521. Uniform form of written financing statement and amendment.

(a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the form and format set forth in the official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in Section 75-9-516(b).

(b) A filing office that accepts written records may not refuse to accept a written record in the form and format set forth in the official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in Section 75-9-516(b).

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 18, eff from and after July 1, 2013.

§ 75-9-522. Maintenance and destruction of records.

(a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one (1) year after the effectiveness of the financing statement has lapsed under Section 75-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(1) If the record was filed or recorded in the filing office described in Section 75-9-501(a)(1), by using the file number assigned to the initial financing statement to which the record relates and the date that the record was filed for record; or

(2) If the record was filed in the filing office described in Section 75-9-501(a)(2), by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

SOURCES: Derived from former 1972 Code § 75-9-403 [Codes, 1942, § 41A:9-403; Laws, 1966, ch. 316, § 9-403; Laws, 1977, ch. 452, § 26; Laws, 1978, ch. 401, § 8; Laws, 1979, ch. 369; Laws, 1985, ch. 381, § 1; Laws, 1987, ch. 373, eff from and after July 1, 1987] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-523. Information from filing office; sale or license of records.

(a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to Section 75-9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to Section 75-9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to Section 75-9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three (3) business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) Has not lapsed under Section 75-9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under Section 75-9-515 and a record of which is maintained by the filing office under Section 75-9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate or, if so requested in writing, a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but, in the case of a filing office described in Section 75-9-501(a)(2), not later than two (2) business days after the filing office receives the request.

(f) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office. This subsection shall apply only to records filed in a filing office described in Section 75-9-501(a)(2).

SOURCES: Derived from former 1972 Code § 75-9-407 [Codes, 1942, § 41A:9-407; Laws, 1968, ch. 492, § 1; Laws, 1977, ch. 452, § 30; Laws, 1985, ch. 381, § 5, eff from and after July 1, 1985] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-407.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-407.

6. In general.

Language of New York version of UCC § 9-407, pertaining to obtaining information from filing officer, is mandatory and not discretionary. Thus, filing officer's erroneous certification to inquirer that there was no record on file of any financing statement pertaining to debtor was not discretionary act, but was actionable error committed in performance of ministerial duty. Hudleasco, Inc. v. State, 90 Misc. 2d 1057 (1977), aff'd, 63 A.D.2d 1042, 405 N.Y.S.2d 784 (3d Dep't 1978).

Where financing statement was properly filed and debtor subsequently changed its corporate name, secured party was not under obligation to refile its financing statement to reflect such change of name notwithstanding secured party had knowledge of the change. Continental Oil Co. v. Citizens Trust & Sav. Bank, 57 Mich. App. 1, 225 N.W.2d 209 (1974), aff'd, 397 Mich. 203, 244 N.W.2d 243, 99 A.L.R.3d 1179 (1976).

ATTORNEY GENERAL OPINIONS

Under Section 75-9-407(2) the Office of the Secretary of State may establish a procedure for "expedited" search requests for financing statements. However, the Secretary of State may not assess an additional fee for such search requests. Philip, August 2, 1996, A.G. Op. #96-0401.

RESEARCH REFERENCES

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws § 195 et seq.

68A Am. Jur. 2d, Secured Transactions §§ 336, 344, 346.

Request to filing officer for information as to existence of and copy of filed financing statement, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:654.

Information from filing officer, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2131, 253:2132.

CJS. 76 C.J.S., Records § 69 et seq.

§ 75-9-524. Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

SOURCES: Derived from 1972 Code § 75-4-109 [Formerly § 75-4-108: Codes, 1942, § 41A:4-108; Laws, 1966, ch. 316, § 4-108; Laws, 1992, ch. 420, § 80, eff from and after January 1, 1993] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-525. Fees.

(a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) is the amount specified in subsection (c), if applicable, plus:

(1) Ten Dollars ($10.00) if the record is communicated in writing and is in the standard form prescribed by the Secretary of State;

(2) Thirteen Dollars ($13.00) if the record is communicated in writing and is not in the standard form prescribed by the Secretary of State; and

(3) Eight Dollars ($8.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c), if applicable, plus:

(1) Thirteen Dollars ($13.00) if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) Ten Dollars ($10.00) if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) Except as otherwise provided in subsection (e), if a record is communicated in writing, the fee for each additional debtor name more than one (1) required to be indexed is Four Dollars ($4.00).

(d) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) Five Dollars ($5.00) if the request is communicated in writing on the standard form prescribed by the Secretary of State;

(2) Ten Dollars ($10.00) if the request is communicated in writing and is not in the standard form prescribed by the Secretary of State;

(3) Three Dollars ($3.00) if the request is communicated by another medium authorized by filing-office rule; and

(4) An additional fee of Two Dollars ($2.00) shall be paid by the requesting party for each financing statement listed on the filing officer's certificate, the aggregate of which shall be billed to the requesting party at the time the filing officer's certificate is issued.

(e) This section does not require a fee to the chancery clerk with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 75-9-502(c). However, the recording and satisfaction fees to the chancery clerk that otherwise would be applicable under Section 25-7-9 to the record of the mortgage apply.

SOURCES: Derived from former 1972 Code § 75-9-403 [Codes, 1942, § 41A:9-403; Laws, 1966, ch. 316, § 9-403; Laws, 1977, ch. 452, § 26; Laws, 1978, ch. 401, § 8; Laws, 1979, ch. 369; Laws, 1985, ch. 381, § 1; Laws, 1987, ch. 373, eff from and after July 1, 1987] and enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 309, § 21, eff from and after passage (approved Feb. 21, 2006.)

ATTORNEY GENERAL OPINIONS

Until December 31, 2007, the fee for filing a UCC 3 Termination Statement on the standard form (both the national form and the Mississippi Secretary of State approved form) is $10.00 and $13.00 if a nonstandard form is used. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

§ 75-9-526. Filing-office rules.

(a) The Secretary of State shall adopt and publish rules to implement this article. The filing-office rules must be:

(1) Consistent with this article; and

(2) Adopted and published in accordance with the Mississippi Administrative Procedures Act.

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules, shall:

(1) Consult with filing offices in other jurisdictions that enact substantially this part; and

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-527. Duty to report.

The Secretary of State shall report annually on or before January 2 to the Legislature on the operation of the filing office. The report must contain a statement of the extent to which:

(1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) The filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

PART 6.

DEFAULT.

Subpart 1. Default and Enforcement of Security Interest....................75-9-601
Subpart 2. Noncompliance With Article..75-9-625

Editor's Note — Many of the notes found under this part originated with the prior version of Chapter 9 which was revised in 2001. They have been moved to their current location at the direction of Codification Counsel. Some of the sections of the Uniform Commercial Code referenced in case notes under "Judicial Decisions" were current when the cases were decided but may have been revised or repealed since then. Cases decided under former law are clearly identified.

SUBPART 1.

DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.

SEC.
75-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.
75-9-602. Waiver and variance of rights and duties.
75-9-603. Agreement on standards concerning rights and duties.
75-9-604. Procedure if security agreement covers real property or fixtures.
75-9-605. Unknown debtor or secondary obligor.
75-9-606. Time of default for agricultural lien.
75-9-607. Collection and enforcement by secured party.
75-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.
75-9-609. Secured party's right to take possession after default.
75-9-610. Disposition of collateral after default.
75-9-611. Notification before disposition of collateral.
75-9-612. Timeliness of notification before disposition of collateral.
75-9-613. Contents and form of notification before disposition of collateral: general.
75-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.
75-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.
75-9-616. Explanation of calculation of surplus or deficiency.
75-9-617. Rights of transferee of collateral.
75-9-618. Rights and duties of certain secondary obligors.
75-9-619. Transfer of record or legal title.
75-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.
75-9-621. Notification of proposal to accept collateral.
75-9-622. Effect of acceptance of collateral.
75-9-623. Right to redeem collateral.
75-9-624. Waiver.

§ 75-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 75-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106 or 75-9-107 has the rights and duties provided in Section 75-9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and Section 75-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in Section 75-9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

SOURCES: Derived from former 1972 Code § 75-9-501 [Codes, 1942, § 41A:9-501; Laws, 1966, ch. 316, § 9-501; Laws, 1977, ch. 452, § 32, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 70, eff from and after July 1, 2006.

Cross References — Attachment in chancery, see § 11-31-1 et seq.
Attachment at law, see § 11-33-1 et seq.
Executions, see § 13-3-111 et seq.
Variations of provisions of this Code by agreement, see § 75-1-302.
Definitions, see § 75-9-102.
Scope of Article, see § 75-9-109.
Secured party's rights on disposition of collateral, see § 75-9-315.

Ineffective restrictions, see § 75-9-408, § 75-9-409.
Collection and enforcement by secured party after default, see § 75-9-607.
Procedures after default: liability for deficiency and right to surplus, see § 75-9-608.
Disposition of collateral after default, see § 75-9-610.
Notification of proposal to accept collateral, see § 75-9-621.
Determination of whether conduct was commercially reasonable, see § 75-9-627.
Right to redeem collateral, see § 75-9-623.

JUDICIAL DECISIONS

I. Under Current Law.

1.-4. [Reserved for future use.]
5. Repossession.

II. Under Former § 75-9-501(1), (2), (5).

6. In general.
7. Alternative and cumulative nature of remedies.
8. —Deficiency judgment.
9. Acceleration of obligation.
10. Sale of collateral by secured party.
11. —Notice of sale.
12. —Waiver of right to notice.
13. Unauthorized sale of collateral by debtor.
14. Foreclosure procedures under state law.
15. Proceedings involving both real and personal property.
16. Priorities among competing creditors.
17. Waivers of rights or remedies.

I. Under Current Law.

1.-4. [Reserved for future use.]

5. Repossession.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Ann. § 75-9-601(a); the judge blocked the tow truck's travel and attempted to use his office to intimidate officers at the scene. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

II. Under Former § 75-9-501(1), (2), (5).

6. In general.

Although security interests in personal property created by Uniform Commercial Code can be enforced under UCC § 9-501(1) by "any available judicial procedure," such an interest cannot be enforced under Mississippi "Summons and Seizure" law (also known as Mississippi "Enforceable Lien Statute") because a UCC security interest in personal property is not included among liens set forth in the summons and seizure law. Burns v. Delta Loans, Inc., 354 So. 2d 268 (Miss. 1978).

The obvious purpose of UCC § 9-501(1) and (5) is to abolish the doctrine of election of remedies. Ruidoso State Bank v. Garcia, 92 N.M. 288, 587 P.2d 435 (1978).

Lack of perfection of security interest under Article 9 of UCC relates only to priority over other creditors' interests in collateral, and security agreement as between parties themselves and second party's rights over collateral as against debtor are unaffected by failure to perfect security interest; thus, assignee for security purposes of beneficial interest in land trust was entitled to redeem from tax sale of real estate which comprised corpus of trust notwithstanding his failure to perfect security interest by filing financial statement. Application of County Treasurer of Du Page County (App. 2 Dist.1973) 16 Ill. App. 3d 385, 306 N.E.2d 743

Under Code §§ 9-306 and 9-601, secured party given rights only against debtor not against purchaser therefrom; secured party had no right of action in assumpsit against purchaser, either for original debt or for proceeds of resale. Beneficial Fin. Co. v. Colonial Trading Co., 43 Pa. D. & C.2d 131 (1967).

The secured party is not entitled to rescind the transaction merely because the debtor has defaulted. Monroe Capital Corp. v. Pom-Pom Lunch & Restaurant, Inc., 4 U.C.C. Rep. Serv. 511 (1967, NY Sup).

Federal law rather than state law would control an action based upon an alleged conversion by an auctioneer by sale at public auction of cattle against which the Farmers Home Administration had a recorded security agreement executed in its favor by the owner of the cattle. United States v. Sommerville, 324 F.2d 712 (3d Cir. Pa. 1963), cert. denied, 376 U.S. 909, 84 S. Ct. 663, 11 L. Ed. 2d 608 (1964).

7. Alternative and cumulative nature of remedies.

The right of set-off exists even if a bank's indebtedness is secured by collateral. Thus, in a case where a security agreement and note executed by the plaintiff to obtain an automobile loan gave the bank authority to set-off or charge the note against any deposit account or any other account maintained by the plaintiff with the bank without notice to the plaintiff, the bank acted properly when it set-off the savings account deposit of the plaintiff against the debt which was then in default. Duncan v. Coahoma Bank, 397 So. 2d 891 (Miss. 1981).

Under the Uniform Commercial Code, a secured creditor may choose between two basic methods of getting his money out of a balky debtor. First, he can seize the goods subject to his security interest and either keep them in satisfaction of the debt or resell them and apply the proceeds to the debt. Alternatively, he can ignore his security interest, obtain a judgment on the underlying obligation, and proceed by execution and levy. However, although a secured creditor's remedies are "cumulative" under UCC § 9-501(1), he must choose which remedy he will utilize and pursue it to fruition. In other words, he may first attempt to enforce his rights by one method and, if it proves unsuccessful, utilize another, but he should not be permitted to harrass the debtor by simultaneously pursuing two or more methods of attack that are open to him. Insurance Co. of N. Am. v. GECC, 119 Ariz. 97, 579 P.2d 601 (Ct. App. 1978).

Where secured party obtained default judgment on debtor's promissory notes covering loans on two vehicles and then, after failure of its attempted levy on vehicles, sought to replevy them pursuant to provisions of its security agreement with debtor, court held (1) that under UCC §§ 9-501(1) and (5) and Official Comment 6, secured party was not precluded from replevying vehicles under the security agreement by first having obtained default judgment on the debt; (2) that plaintiff's security interest in vehicles did not merge into such judgment because plaintiff had two separate causes of action, namely, to reduce debt to judgment and to foreclose under its security agreement; (3) that UCC §§ 9-501(1) and (5) were intended to abolish doctrine of election of remedies; (4) that New Mexico UCC § 9-504(2) (not part of Official UCC), which provides that debtor is liable for any deficiency except where collateral is consumer goods, did not prevent plaintiff from replevying vehicles in suit, which were consumer goods, since New Mexico UCC § 9-504(2), by its own terms, contemplated a "deficiency"; (5) that there could be no deficiency in present case until there had been a repossession and sale of consumer goods constituting debtor's collateral; and (6) that until such sale and an attempt to collect any resulting deficiency, debtor had not been injured. Ruidoso State Bank v. Garcia, 92 N.M. 288, 587 P.2d 435 (1978).

UCC § 9-501 and Official Comment 6 indicate that a judgment lien acquired by a secured creditor creates no new interest in the creditor and that it is simply a continuation of the original interest created by the security agreement. Ruidoso State Bank v. Garcia, 92 N.M. 288, 587 P.2d 435 (1978).

UCC § 9-501(1) plainly states that the remedies of proceeding on the debtor's note and the security agreement are cumulative, and that each remedy remains in force, although efforts may have been made to collect the debt by the alternate means. Ruidoso State Bank v. Garcia, 92 N.M. 288, 587 P.2d 435 (1978).

A secured party who is in possession of collateral that is not subject to the obligations imposed by UCC § 9-505(1) may seek judgment on the debt and forego recourse against the collateral, since under UCC § 9-501(1), the secured party's rights and remedies are cumulative. Except in the special case covered by UCC § 9-505(1), the Uniform Commercial Code does not require a secured party in possession of collateral to apply it to the reduction of the debt. Keller v. La Rissa, Inc., 60 Haw. 1, 586 P.2d 1017 (1978).

In action by financer of motor-vehicle dealer to recover against dealer's statutory license bond for alleged conversion of vehicles sold by dealer, who was in default under security agreement with plaintiff, mere existence of plaintiff's right to take possession of vehicles, after dealer's default, under "self-help" repossession provisions of UCC § 9-503 was not sufficient possessory interest to sustain conversion claim where plaintiff, prior to making such claim against dealer's bond, had not attempted exercise its right to repossess vehicles. Insurance Co. of N. Am. v. GECC, 119 Ariz. 97, 579 P.2d 601 (Ct. App. 1978).

Creditor's remedies set forth in UCC § 9-501(1) are cumulative. Bilar, Inc. v. Sherman, 40 Colo. App. 38, 572 P.2d 489 (1977).

Even if guaranty agreement was secured by pledge of shares of stock, under UCC § 9-501 secured party was not required to exhaust security before seeking personal judgment against guarantor. FDIC v. Bismarck Inv. Corp., 547 P.2d 212 (Utah 1976).

Where secured party pursued one of its cumulative rights and remedies under UCC § 9-501 by obtaining judgments against manufacturers of mobile homes on their repurchase agreements, obtaining of such judgments did not constitute satisfaction as to debtor particularly where it was undisputed that no payments had ever been received under such judgments. Pruske v. National Bank of Commerce, 533 S.W.2d 931 (Tex. Civ. App. 1976).

Secured party's remedies are cumulative under UCC § 9-501(1) and secured party is not required to elect one remedy to exclusion of another; therefore, secured party's decision not to execute upon judgment it held against debtor was within its statutory prerogatives and did not constitute breach of duty owed to guarantor. Shultz v. Delaware Trust Co., 360 A.2d 576 (Del. Super. 1976).

There is nothing in provisions of UCC § 9-501 which would alter rule that secured creditor, having obtained in personam judgment without asserting its security interest, was precluded, under principles of res judicata, from bringing subsequent action to enforce its security interest, and that secured creditor was likewise precluded from enforcing its security interest against trustee in bankruptcy. In re Wilson, 390 F. Supp. 1121 (D. Kan. 1975).

In declaratory judgment action brought by mobile home retailer against financing company, wherein financing company counterclaimed for possession of mobile homes covered by financing agreement and for amounts owed to financing company, financing company did not have to make an election of remedies; under UCC § 9-501(1), remedies of financing company, as secured party, were cumulative and it could have both possession and judgment for amounts owed to it. Rose's Mobile Homes, Inc. v. Rex Fin. Corp., 383 F. Supp. 937 (W.D. Ark. 1974).

In action on two promissory notes secured by debtor's interest in leases of two vending machines, UCC § 9-501(1) entitled creditor to collect note without first seeking recourse against collateral, particularly where creditor did first reasonably try to repossess machines; third promissory note secured by note payable to debtor which was itself secured by fourth deed of trust on realty was also recoverable under UCC § 9-102(3) without first requiring creditor to foreclose trust deed. Bank of Cal. v. Leone, 37 Cal. App. 3d 444 (1st Dist. 1974).

Even though secured party elected to exercise its "self-held" rights and take possession of the security, it could still maintain an action on the debt secured until all of the security had been sold in a commercially reasonable manner, under UCC § 9-501(1) provision for cumulative remedies. Peoples Nat'l Bank v. Peterson, 7 Wash. App. 196, 498 P.2d 884 (1972), aff'd, 82 Wash. 2d 822, 514 P.2d 159 (1973).

The remedies available to a secured party are permissive so that he may upon default sue for accelerated balance due without first retaking possession of the collateral and attempting to effect a sale in order to reduce the balance due by the debtor. Consolidated Loan & Fin. Co. v.

Howell, 116 Ga. App. 308, 157 S.E.2d 328 (1967).

Where debtor in consideration of an accumulation of rent arrearages entered into a security agreement with his landlord creating a security interest in office, laboratory and plant equipment pursuant to the Uniform Commercial Code, and as evidence of his obligation debtor executed and delivered to the landlord a judgment note and judgment was entered thereon, and because of debtor's default, the landlord issued execution on the judgment and caused a levy to be made on all of debtor's property, including that covered by the security agreement, the landlord was not thereby deprived of the lien of his perfected secured claim, and was in a protected position in the debtor's voluntary bankruptcy proceeding. In re Adrian Research & Chem. Co., 269 F.2d 734 (3d Cir. Pa. 1959).

8. —Deficiency judgment.

A secured party may judicially foreclose his security interest under UCC § 9-501(1) and also obtain a deficiency judgment. Lew v. Goodfellow Chrysler-Plymouth, Inc., 6 Wash. App. 226, 492 P.2d 258 (1971).

Provision in conditional sales contract for right of deficiency after sale of security upon default, is valid. Brunswick Corp. v. J & P, Inc., 296 F. Supp. 544 (W.D. Okla. 1969), aff'd, 424 F.2d 100 (10th Cir. Okla. 1970).

9. Acceleration of obligation.

In debtor's action to enjoin creditor from enforcing two security agreements against collateral therefor, where evidence showed (1) that debtor and creditor had entered into such security agreements and that one of them had been perfected in several states, including New Jersey, (2) that second security agreement had in no way diminished validity of first security agreement, (3) that debtor's reason for seeking injunction against enforcement of such security agreements was creditor's alleged oral agreement to refrain from foreclosing on any debts due it in order to allow debtor to attain a healthy operating condition, (4) that creditor, after concluding that debtor could not attain a healthy operating condition, formally declared debtor to be in default under such security agreements and to owe creditor over $27 million in principal debt and (5) that creditor had then accelerated maturity of all of debtor's term obligations and demanded payment of all principal and interest on debtor's demand obligations, court held (1) that debtor's claim of alleged oral agreement to refrain from foreclosure was unsupported by the evidence, (2) that under (a) UCC § 1-105(1), dealing with power of parties to choose law applicable to their transactions, (b) UCC § 9-102(1), which intends that substantive law of place where collateral is located governs without regard to possible contracts in other jurisdictions, and (c) UCC § 9-103, which lays down numerous choice-of-law rules regarding creation, perfection, and priorities in multistate security-agreement transactions, law of New Jersey governed security agreements in suit, (3) that security interests created by security agreements in suit were valid, (4) that debtor had failed to show any reason for granting injunctive relief against their enforcement and (5) that on debtor's default, creditor under UCC § 9-501(1), as adopted in New Jersey, had right to reduce its claim to judgment and to foreclose on the collateral. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978).

Although notes which had been guaranteed by individual who subsequently became bankrupt, which were made payable to borrowers from bank, and which were held by bank as collateral security for loans made to borrowers, were not in default when bank claimed its right of set-off against bankrupt under UCC § 9-207(1), insolvency of guarantor triggered bank's privilege, and possibly its duty, not only to file proof of claim in bankruptcy proceedings, but in alternative to assert any available set-off; initial immaturity of bankrupt guarantor's obligation upon collateral notes was not bar to bank's right of set-off. In re Johnson, 552 F.2d 1072 (4th Cir. Va. 1977).

Where (1) lessor of computer, after purchasing it from manufacturer, leased it to lessee for 72 months at fixed rental per month, (2) lease provided that lessee could renew lease for one year for sum that equalled amount of one monthly rent payment and that at end of such renewal, lessee would become owner of computer, (3) lessee's obligation to pay rent was absolute and unconditional, and lease was not cancellable, (4) lessor disclaimed all warranties, express or implied, including implied warranties of merchantability and fitness for particular use, (5) computer did not function properly, and (6) lessee defended refusal to pay further rent on ground of failure of consideration, court held (1) that under UCC § 1-201(37), lease as a matter of law was actually intended as security agreement, especially since lessee could become owner of computer by paying amount that was equivalent to only one monthly rental, (2) that since lessor was to be viewed as conditional seller of computer, UCC § 9-206(2) applied with respect to effectiveness of lessor's disclaimer of warranties, (3) that warranty disclaimer in lease clearly satisfied requirements of UCC § 2-316(2) for exclusion or modification of warranties, (4) that lessee's remedy was solely against manufacturer of computer, instead of lessor, and (5) that under UCC § 9-501(1), lessor, with respect to lessee's failure to pay rent, had rights and remedies provided in security agreement between the parties, which agreement provided that on lessee's default and demand by lessor, lessee would pay amount equal to all unpaid rentals under the lease, plus interest at specified rate. Citicorp Leasing, Inc. v. Allied Institutional Distribs., Inc., 454 F. Supp. 511 (W.D. Okla. 1977).

Where security agreement expressly provided that filing of petition in bankruptcy was event constituting default, holder of security interest had right upon default to take control of all proceeds of collateral under UCC §§ 9-306 and 9-501 et seq., including right to receive and retain all subsequent lease payments. Feldman v. Philadelphia Nat'l Bank, 408 F. Supp. 24 (E.D. Pa. 1976).

When the bank is the holder of a note of its depositor it may accelerate the note according to its terms and apply the depositor's account to the payment of the depositor's debt. Olsen v. Valley Nat'l Bank, 91 Ill. App. 2d 365, 234 N.E.2d 547 (2d Dist. 1968).

10. Sale of collateral by secured party.

Secured creditor failed to comply with Code by purchasing repossessed truck at its own private sale; held, debtors were not entitled to directed verdict in suit for damages resulting from such sale, where testimony of creditor's general manager and employee did not stand uncontroverted as to amount of damages. Carter v. Ryburn Ford Sales, Inc., 248 Ark. 236, 451 S.W.2d 199 (1970), overruled on other grounds, Frist State Bank v. Hallett, 291 Ark. 27, 722 S.W.2d 555 (1987).

Section 9-504 of the Uniform Commercial Code, which provides that after the debtor defaults on a debt a secured party may sell, lease or otherwise dispose of any collateral in the manner provided in the statute and the debtor shall be liable for the deficiency, is applicable to determine the rights of the parties where plaintiff, a secured party which took possession of collateral upon the default of defendant debtors, received a letter from defendants, as maker and guarantors of the note, consenting to plaintiff's proposal to retake the collateral and, as to the inventory, consenting to plaintiff's suggested method of disposition, inasmuch as not only was it within their power to set the standards by which their rights and duties were to be measured (Uniform Commercial Code, § 9-501, subd [3]), but having accepted the terms in plaintiff's letter, defendants may not challenge the method of disposition or value placed on the inventory. Plaintiff failed to comply with the provisions of section 9-504 regarding fixtures where a letter from plaintiff contained no proposal for their disposition and defendants' consent extended no further than agreeing to possession, since section 9-504 requires that after taking, the collateral shall be disposed of in a commercially reasonable manner after notice to the debtor; however, this failure to comply does not deprive plaintiff of its deficiency judgment, but it must prove, at trial, the amount of the debt, the fair market value of the security and the resulting deficiency. S.M. Flickinger Co. v. 18 Genesee Corp., 71 A.D.2d 382 (4th Dep't 1979).

Creditor's contention that sheriff's seizure of debtor's goods pursuant to default judgment, which was followed by a private, rather than a public, sale of the goods, was a permissible intermingling of the creditor's various remedies was not maintainable, since there is a crucial distinction between a creditor's repossession of collateral pursuant to the UCC, which is followed by the initiation of judicial proceedings, and a sheriff's seizure and private sale that is not in accordance with recognized judicial procedures. Bilar, Inc. v. Sherman, 40 Colo. App. 38, 572 P.2d 489 (1977).

Where there was no claim that collateral had not been sold in "commercially reasonable" manner as required by UCC § 9-504(3) and where collateral was sold for less than unpaid balance due on note, secured party was not required to account to debtor for surplus resulting from sale of collateral as provided by UCC § 9-504(2). Panagiotes v. Plummer, 5 Mass. App. Ct. 821, 362 N.E.2d 555 (1977).

Where renewal note provided for due date payment rather than installment payments as original note had specified and where bank continued to accept installment payments for three years after due date and did not present note for payment on due date or at any time thereafter, right of possession of collateral was in debtors absent demand by bank for payment of note or for surrender of collateral; a clause in a security instrument providing that a creditor may at any time he feels insecure treat debt as due and take and sell the property, does not authorize seizure and sale of property unless debtor is about to do, or has done, some act which tends to impair the security. Nebraska State Bank v. Dudley, 198 Neb. 132, 252 N.W.2d 277 (1977).

Where guaranty by its terms was absolute guaranty, obligations of guarantor could be immediately enforced without necessity of action against principal obligor or collateral; thus, guarantor's argument that creditor failed to mitigate damages, based on allegation that creditor failed to dispose of collateral in "commercially reasonable" manner as required by UCC §§ 9-501 to 9-507, did not constitute valid defense to claim of creditor. First Com. Corp. v. Geter, 37 Colo. App. 391, 547 P.2d 1291 (1976).

Where secured party held corporate stock as security for payment of purchase price of stock and purchasers defaulted, and where manner in which stock was publicly auctioned, foreclosure of purchaser's interest in it and manner of giving notice of sale were reasonable, trial court erred in action by secured party in refusing to grant deficiency judgment and to foreclose mortgages given as supplementary security, notwithstanding secured party purchased stock at public auction. Foster v. Knutson, 84 Wash. 2d 538, 527 P.2d 1108 (1974).

Where testimony was in substantial agreement that there was no widespread market for used restaurant equipment, particularly kind specifically designed for use of particular franchise, and all parties testified that they knew of no standard price quotations for such equipment, such collateral was not of type that could have been validly purchased by secured party at private sale under UCC § 9-504(3) and such purchase by secured party violated UCC § 9-501 and 9-507. Wirth v. Heavey, 508 S.W.2d 263 (Mo. Ct. App. 1974).

Conditional vendee's ownership rights in collateral would not be cut off as result of failure to make payments and entry of default judgment, but default would merely satisfy condition precedent to conditional vendor's right to invoke certain Code remedies, including right to replevy goods and either keep them or dispose of them by sale; whether conditional vendor kept replevied goods as own or disposed of them by sale, adherence to applicable notice provisions would be required; only if conditional vendor ignored his rights against collateral and elected to proceed, like any creditor, on underlying debt, would subsequent disposal of collateral not be governed by Article 9 of Code. Roebuck v. Walker-Thomas Furn. Co., 310 A.2d 845 (D.C. 1973).

11. —Notice of sale.

Collateral soybeans were not disposed of in commercially reasonable manner in light of the fact that, inter alia, no written notice of the proposed disposition was provided the debtor. Jones v. United States ex rel. Commodity Credit Corp., 107 B.R. 888 (Bankr. N.D. Miss. 1989).

If "lease" between parties actually created security interest, debtor was entitled under UCC § 9-501(3)(b) and § 9-504(3) to assert, in action for deficiency judgment following sale of collateral, defense of lack of notice of such sale. Burns v. Equilease Corp., 357 So. 2d 786 (Fla. App. 1978).

Sale of collateral at public auction was void as to debtor where debtor received no notice thereof, as required by UCC § 9-504(3), and waiver of such notice was prohibited by UCC § 9-501(3)(b). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Secured party who proposed after debtor's default to retain collateral in satisfaction of the obligation, but who failed to give debtor written notice of such proposal as required by UCC § 9-505(2), could not retain collateral since waiver of such notice is expressly prohibited by UCC § 9-501(3)(c). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Notice of public sale of corporate stock held as collateral for payment of promissory note, which was mailed six days before intended sale, was not commercially unreasonable where (1) standard for measuring commercial reasonableness agreed to by creditor and debtor-namely, five days-was satisfied, and (2) such standard was not manifestly unreasonable under UCC § 9-501(3), especially since debtor failed to present any substantial evidence that an additional day or two, or even a week, would have made any difference in his ability to pay. Mullins v. Horne, 120 Ariz. 587, 587 P.2d 773 (Ct. App. 1978).

Secured party may recover deficiency judgment despite failure to give notice of sale as provided by UCC § 9-501, where creditor proves the amount of the deficiency and that the fair value of the security was less than the amount of the debt; it is only where the sale is conducted pursuant to code requirements that the amount received or bid at the sale is evidence of its value in an action for a deficiency. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

When debtor is in default under security agreement, secured party has rights and remedies that agreement provides for. Thus, on default, creditor under UCC § 9-501(1) may reduce his claim to judgment, foreclose, or otherwise enforce his security interest by any available judicial procedure. In addition, unless otherwise agreed, secured party on default has right under UCC § 9-503 to take possession of collateral. Accordingly, where debtor, whose payments on indebtedness were up-to-date, was in default because he had sold collateral covered by security agreement to third person without informing secured party or obtaining his consent, secured party could recover property in claim and delivery action, since neither UCC § 9-501(1) nor UCC § 9-503 makes an exception for technical defaults that do not cause financial injury to secured party. Gorham v. Denha, 77 Mich. App. 264, 258 N.W.2d 196 (1977).

Automobile "lease agreement" was, in fact, secured transaction within meaning of Article 9 of Uniform Commercial Code where agreement was of indefinite duration and, at its inception, passed all risks and indicia of ownership of vehicle to purported lessee, in that lessee not only insured against any loss to leasing company of its capitalized cost, but after 26 months, was entitled to any surplus funds if and when car was sold, and where at end of 56 months, car would, at option of lessee, pass to her at no cost, since monthly installment payments would have equaled capitalized cost of vehicle. Right of debtor to receive notice of intended disposition of collateral after default may not be limited under UCC § 9-501(1), (3)(b), and inasmuch as leasing company failed to comply with notice provision of UCC § 9-504(3) before selling repossessed vehicle, it was precluded from recovering deficiency judgment and could only recover sums owed to it prior to repossession as well as repossession charges. Avis Rent-A-Car Sys. v. Franklin, 82 Misc. 2d 66 (1975).

New York courts would not permit the holder of a conditional automobile sales contract to secure a deficiency judgment, where the car had been repossessed and sold in Massachusetts without notice to the debtor in violation of the Massachusetts Uniform Commercial Code, although such a sale was permissible under the laws of the District of Columbia where the contract was originally made. Associates Disct. Corp. v. Cary, 47 Misc. 2d 369 (1965).

12. —Waiver of right to notice.

Procedures used by creditor to liquidate collateral soybeans were so devoid of any hint of commercial reasonableness that debtor could not be considered to have waived rights to protest disposition of collateral through language of farm storage notes and security agreements. Jones v. United States ex rel. Commodity Credit Corp., 107 B.R. 888 (Bankr. N.D. Miss. 1989).

The provisions set forth in a printed form of assignment of a conditional sales contract waiving notice to the assignor who agreed to repurchase the contract in the event of default is only an attempted waiver, ineffective of the provisions of subd (3) of § 9-504. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

Where (1) plaintiff and his wife purchased used mobile home, (2) plaintiff's father-in-law cosigned security agreement and note as accommodation maker, (3) plaintiff defaulted on payments, (4) plaintiff's father-in-law, with secured party's consent, obtained possession of home, paid off balance due on note, and made repairs on home, (5) secured party obtained repossession title in its name, released security agreement, and transferred repossession title to plaintiff's father-in-law without notifying plaintiff, who was in jail, of either the account delinquency or the subsequent transfer of title, and (6) after plaintiff's release from jail, plaintiff's father-in-law sold home with plaintiff's consent, but did not give accounting of sale or proceeds therefrom to plaintiff, court held (1) that plaintiff did not waive right to notice of disposition of home under UCC § 9-504(3), since UCC § 9-501(3)(b) specifically states that such right cannot be waived; (2) plaintiff's father-in-law, as accommodation maker of note, did not fall within scope of UCC § 9-504(5), dealing with transfers of collateral that are not sales and thus do not require notice to debtor; (3) UCC § 9-504(5) did not contemplate complete extinguishment of plaintiff's right to home, as was done in present case by secured party's transfer of repossession title to plaintiff's father-in-law; and (4) under UCC § 9-507(1) and UCC § 1-103, plaintiff was entitled to damages for conversion of home on basis of benefit to defendant wrongdoers, rather than on basis of allowing full value of home as enhanced by wrongdoers. Western Nat'l Bank v. Harrison, 577 P.2d 635 (Wyo. 1978).

Secured party who proposed after debtor's default to retain collateral in satisfaction of the obligation, but who failed to give debtor written notice of such proposal as required by UCC § 9-505(2), could not retain collateral since waiver of such notice is expressly prohibited by UCC § 9-501(3)(c). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Loan contract which contained provision for waiver of notice of sale of repossessed collateral in violation of UCC § 9-501(3)(b) and § 9-504(3) was not completely void, but merely contained unenforceable provision, where defendant lender did not foreclose on or sell any property of plaintiff debtor and waiver provision was not in any way involved in the litigation between the parties. Lowe v. Termplan, Inc., 144 Ga. App. 671, 242 S.E.2d 268 (1978).

UCC § 9-504(3), which provides that every aspect of disposition of collateral must be commercially reasonable and that reasonable notification of such disposition must be sent to debtor, cannot be waived, as is expressly declared by UCC 9-501(3)(b). Savings Bank v. Booze, 34 Conn. Supp. 632, 382 A.2d 226 (1977).

Proper interpretation of UCC § 9-501(3)(b), which is in accordance with policy of UCC § 9-504 to protect rights of debtor, is that nonwaiver provision of UCC § 9-501(3) applies both before and after debtor's default. Thus, UCC § 9-501(3)(b) does not allow waiver by debtor of his right under UCC § 9-504(3) to reasonable notification of private sale of collateral after debtor's default on underlying obligation. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

Where bank loaned debtor money to buy airplanes and loans were secured by such airplanes, and where bank repossessed airplanes because of debtor's failure to make payment, sold them at private sale, and sued guarantors of loans for deficiency judgment under guaranty agreement which unambiguously contained waiver by guarantors that bank could sell or release collateral (airplanes) without notice to guarantors and without affecting their absolute liability, (1) policies underlying UCC § 9-504(3), requiring principal debtor to be given notice of creditor's sale of collateral, would be interpreted as giving guarantor defense to deficiency claim where secured party failed to give principal debtor statutory notice of such sale; (2) such defense was waived by defendant guarantors by express provision in guaranty agreement; and (3) such waiver of notice under UCC § 9-504(3) was not specifically barred by UCC § 9-501(3), since UCC § 9-501(3) applies only to debtors and does not by its terms mandate holding that guarantor is precluded by such section from waiving defense of lack of notice to debtor. First Nat'l Park Bank v. Johnson, 553 F.2d 599 (9th Cir. Mont. 1977).

Foreclosure sale of Mack trucks did not come within notification exception of UCC § 9-504 as to goods of type customarily sold on "recognized market"; recognized market within meaning of UCC is most restrictive and might well be stock market or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where prices paid in actual sales of comparable property are currently available by quotation. Furthermore, debtor did not waive right to notice of private sale by requesting creditor to repossess trucks to stop interest accruing on notes; under UCC §§ 9-501 and 9-504 waiver will be permitted only if debtor signs statement after default renouncing or modifying his right to notification of sale. O'Neil v. Mack Trucks, Inc., 533 S.W.2d 832 (Tex. Civ. App. 1975), rev'd, 542 S.W.2d 112 (Tex. 1976), mandate recalled and reissued, 551 S.W.2d 32 (Tex. 1977).

In action by bank seeking recovery under note and commercial equipment security agreement against guarantors, where bank sold collateral upon default prior to giving notice to guarantors and where guaranty agreement expressly waived notice of disposition of collateral, waiver clause was of no effect in that (1) guarantor is a debtor under definition of UCC § 9-105(1)(d), and (2) under UCC § 9-501(3), code provisions covering debtor's rights regarding disposition of collateral and redemption of collateral may not be waived. Barnett v. Barnett Bank, 345 So. 2d 804 (Fla. App. 1977), but see Ayares-Eisenberg Perrine Datsun v. Sun Bank, 455 So. 2d 525 (Fla. Ct. App. 1984).

Where bank agreed to advance funds for floor-plan financing of new and used cars to be sold by debtor, where bank repossessed debtor's automobile stock after default pursuant to UCC § 9-503 and where debtor signed default agreement nine days after repossession which waived all notice of terms, times, and places of sale of repossessed automobiles, waiver of notification of sale of collateral following default was valid under UCC § 9-501(3). Teeter Motor Co. v. First Nat'l Bank, 260 Ark. 764, 543 S.W.2d 938 (1976).

13. Unauthorized sale of collateral by debtor.

Where (1) secured party, on debtor's default in making payments on car, obtained document from debtor in which debtor waived notice of secured party's intended sale of car, (2) secured party, on October 12, 1976, sent letter to debtor by certified mail advising debtor that he could redeem car before such sale, (3) on learning that letter had not been received by debtor, secured party sent debtor second letter on October 19, 1976, which justified debtor's belief that he had until October 29, 1976 to redeem car, and (4) secured party sold car on October 25, 1976, court held (1) that UCC § 9-501(3)(b) prohibited waiver of notice to debtor, which is required by UCC § 9-504(3), of intended sale of car, (2) that even if it could be assumed, despite prohibition contained in UCC § 9-501(3)(b), that debtor had waived his right to such notice, secured party's attempted sending of notice to debtor by certified mail on October 12, 1976 operated as an abandonment of such waiver, (3) that such abandonment was reinforced by secured party's second notice to debtor on October 19, 1976, and (4) that debtor had right to rely on statements in second notice that he could redeem car until October 29, 1976. McKee v. Mississippi Bank & Trust Co., 366 So. 2d 234 (Miss. 1979).

Where a debtor sells collateral subject to a perfected security interest, the secured party may proceed (1) against the debtor (a) to collect the debt or (b) assert his rights to any identifiable proceeds in the hands of the debtor; or (2) against the purchaser by (a) repossession of the purchased goods in person or by an action of replevin or (b) by an action of trespass for conversion of the collateral. Once the purchaser has resold the collateral, the secured party has no contract right of action against the purchaser, either for the original debt or for the proceeds of the sale. Beneficial Fin. Co. v. Colonial Trading Co., 43 Pa. D. & C.2d 131 (1967).

14. Foreclosure procedures under state law.

In debtor's action to enjoin creditor from enforcing two security agreements against collateral therefor, where evidence showed (1) that debtor and creditor had entered into such security agreements and that one of them had been perfected in several states, including New Jersey, (2) that second security agreement had in no way diminished validity of first security agreement, (3) that debtor's reason for seeking injunction against enforcement of such security agreements was creditor's alleged oral agreement to refrain from foreclosing on any debts due it in order to allow debtor to attain a healthy operating condition, (4) that creditor, after concluding that debtor could not attain a healthy operating condition, formally declared debtor to be in default under such security agreements and to owe creditor over $27 million in principal debt and (5) that creditor had then accelerated maturity of all of debtor's term obligations and demanded payment of all principal and interest on debtor's demand obligations, court held (1) that debtor's claim of alleged oral agreement to refrain from foreclosure was unsupported by the evidence, (2) that under (a) UCC § 1-105(1), dealing with power of parties to choose law applicable to their transactions, (b) UCC § 9-102(1), which intends that substantive law of place where collateral is located governs without regard to possible contracts in other jurisdictions, and (c) UCC § 9-103, which lays down numerous choice-of-law rules regarding creation, perfection, and priorities in multistate security-agreement transactions, law of New Jersey governed security agreements in suit, (3) that security interests created by security agreements in suit were valid, (4) that debtor had failed to show any reason for granting injunctive relief against their enforcement and (5) that on debtor's default, creditor under UCC § 9-501(1), as adopted in New Jersey, had right to reduce its claim to judgment and to foreclose on the collateral. Doyle v. Northrop Corp., 455 F. Supp. 1318 (D.N.J. 1978).

In Texas, if a personal judgment against the debtor is obtained on the underlying debt, the secured party may enforce such judgment against the collateral by a writ of execution, and a judicial sale pursuant to such execution is a foreclosure of the security interest by "judicial procedure" within the meaning of UCC § 9-501(1). Garza v. Allied Fin. Co., 566 S.W.2d 57 (Tex. Civ. App. 1978).

Under UCC § 9-501(1), as explained in Official Comment 6, a secured party is entitled to reduce his claim to judgment or to foreclose his interest by any available procedure outside Art 9 that state law may provide. The first sentence of UCC § 9-501(5) makes clear that any judgment lien that the secured party may acquire against the collateral is a continuation of his original interest (if perfected) and not the acquisition of a new interest or a transfer of property to satisfy an antecedent debt. The judgment lien is therefore said to relate back to the date of perfection of the security interest. The second sentence of UCC § 9-501(5) makes clear that a judicial sale following judgment, execution, and levy is one of the methods of foreclosure contemplated by UCC § 9-501(1). Such a sale is governed by other law and not by Art 9, and the restrictions that Art 9 imposes on the right of a secured party to buy in the collateral at a sale under UCC § 9-504 do not apply. Bilar, Inc. v. Sherman, 40 Colo. App. 38, 572 P.2d 489 (1977).

15. Proceedings involving both real and personal property.

Under UCC § 9-501(1), as explained in Official Comment 6, a secured party is entitled to reduce his claim to judgment or to foreclose his interest by any available procedure outside Art 9 that state law may provide. The first sentence of UCC § 9-501(5) makes clear that any judgment lien that the secured party may acquire against the collateral is a continuation of his original interest (if perfected) and not the acquisition of a new interest or a transfer of property to satisfy an antecedent debt. The judgment lien is therefore said to relate back to the date of perfection of the security interest. The second sentence of UCC § 9-501(5) makes clear that a judicial sale following judgment, execution, and levy is one of the methods of foreclosure contemplated by UCC § 9-501(1). Such a sale is governed by other law and not by Art 9, and the restrictions that Art 9 imposes on the right of a secured party to buy in the collateral at a sale under UCC § 9-504 do not apply. Bilar, Inc. v. Sherman, 40 Colo. App. 38, 572 P.2d 489 (1977).

Where security agreement covered both real and personal property and plaintiff elected to proceed against both, plaintiff's rights and remedies would be determined according to law of foreclosure of interests in real property, and under UCC § 9-501(4), provisions of UCC Art 9 did not apply. State Bank v. Woolsey, 565 P.2d 413 (Utah 1977).

Where bar business was sold by means of two contracts, one involving sale of land and building in which business was conducted and the other involving sale of business itself, bar inventory, and liquor license, and where the personal property sold was covered by security agreement which provided that in event of buyer's default on either contract, buyer would reassign liquor license to seller, such security agreement provision constituted a mutual default clause that was clearly authorized by UCC § 9-501(1). McBride v. Arends, 79 Mich. App. 440, 263 N.W.2d 5 (1977).

Where promissory note was secured by deed of trust on real property and separate security agreement covering personal property, where makers defaulted on promissory note and where creditor brought suit to foreclose deed of trust and security interest, although trial court was correct in limiting creditor's recovery on foreclosure to amount of judgment only, court should have granted creditor's prayer for immediate possession of chattels and authorized creditor to proceed under provisions of UCC § 9-501 et seq. Alexander Dawson, Inc. v. Sage Creek Canyon Co., 37 Colo. App. 339, 546 P.2d 969 (1976).

Where creditor has both real and personal property security, UCC § 9-501 specifies that upon default if creditor proceeds as to both real and personal property security, he must do so according to rights and remedies accorded real property security and not pursuant to UCC, but, although § 9-501(4) is silent on point, such creditor can elect to proceed solely as to personal property under UCC. Walker v. Community Bank, 10 Cal. 3d 729, 518 P.2d 329 (1974).

Code section requiring secured party to give reasonable notification to debtor of its intention to dispose collateral is made inoperative by Code § 9-501(4) with respect to water stock foreclosed as part of real estate security. Kinoshita v. North Denver Bank, 181 Colo. 183, 508 P.2d 1264 (1973).

16. Priorities among competing creditors.

Garnishment proceeding involving priorities between creditors as to funds in hands of clerk of public sale of debtor's property; held, trial judge was correct in ruling that prior judgment creditor, as assignee, was entitled to funds in dispute as against garnishor. Rural Gas, Inc. v. Shepek, 205 Kan. 397, 469 P.2d 341 (1970).

17. Waivers of rights or remedies.

Under UCC § 9-501(3)(a), debtor's right to surplus under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), in the case of a transfer for security as opposed to a sale, cannot be waived by agreement of the parties. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Although UCC § 9-501(3)(d) provides that the debtor's right to redeem may not be varied or waived before default, the language "unless otherwise agreed in writing after default" in UCC § 9-506 does permit the debtor, after default, to waive or vary his right to redeem by an agreement in writing. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

Where bank loaned debtor money to buy airplanes and loans were secured by such airplanes, and where bank repossessed airplanes because of debtor's failure to make payment, sold them at private sale, and sued guarantors of loans for deficiency judgment under guaranty agreement which unambiguously contained waiver by guarantors that bank could sell or release collateral (airplanes) without notice to guarantors and without affecting their absolute liability, (1) policies underlying UCC § 9-504(3), requiring principal debtor to be given notice of creditor's sale of collateral, would be interpreted as giving guarantor defense to deficiency claim where secured party failed to give principal debtor statutory notice of such sale; (2) such defense was waived by defendant guarantors by express provision in guaranty agreement; and (3) such waiver of notice under UCC § 9-504(3) was not specifically barred by UCC § 9-501(3), since UCC § 9-501(3) applies only to debtors and does not by its terms mandate holding that guarantor is precluded by such section from waiving defense of lack of notice to debtor. First Nat'l Park Bank v. Johnson, 553 F.2d 599 (9th Cir. Mont. 1977).

Under the Uniform Commercial Code, a secured creditor need not "elect" his choice of remedies. Instead, he may pursue either those methods of collection that are afforded by the code or those methods that are otherwise available through judicial processes. Moreover, by effectuating the latter course of action, the creditor does not relinquish any rights obtained by virtue of his security interest. Bilar, Inc. v. Sherman, 40 Colo. App. 38, 572 P.2d 489 (1977).

Amended pledge agreement that purported to authorize secured party to dispose of debtors' paintings, held as collateral, for any price or prices unilaterally decided on by secured party was not violative of UCC § 9-501 and was not therefore void and unenforceable since § 9-501 relates only to defaults; although debtors may have been in default under agreement prior to amended pledge agreement and might thereby have had valid defense had action been brought based on that default, debtors destroyed any previous defense when they executed amended pledge agreement. Spillers v. Five Points Guar. Bank, 335 So. 2d 851 (Fla. App. 1976).

Where bank agreed to advance funds for floor-plan financing of new and used cars to be sold by debtor, where bank repossessed debtor's automobile stock after default pursuant to UCC § 9-503 and where debtor signed default agreement nine days after repossession which waived all notice of terms, times, and places of sale of repossessed automobiles, waiver of notification of sale of collateral following default was valid under UCC § 9-501(3). Teeter Motor Co. v. First Nat'l Bank, 260 Ark. 764, 543 S.W.2d 938 (1976).

Secured party who purchased collateral at private sale failed to comply with UCC § 9-504(3) and was not entitled to deficiency judgment against debtors where collateral consisted of fixtures used in restaurant business and, thus, was not collateral of type customarily sold in recognized market or type which was subject of widely or regularly distributed standard price quotations; furthermore, language of security agreement, which provided that secured party could purchase collateral at private sale, constituted antecedent waiver of provisions of UCC § 9-504(3), in violation of UCC § 9-501(3) and was, therefore, contrary to public policy and void. Barber v. LeRoy, 40 Cal. App. 3d 336 (2d Dist. 1974).

RESEARCH REFERENCES

ALR. Title and interest of parties. 10 A.L.R.2d 758.

Purchase by pledgee of subject of pledge. 37 A.L.R.2d 1381.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 467, 482, 483.

Instruction to jury; taking of property by debtor in violation of creditor's rights under security agreement as conversion, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:185.

Default; rights and remedies of secured party; where security interest covers both real and personal property, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:701.

5A Am. Jur. Pl & Pr Forms (Rev), Chattel Mortgages, Forms 51 et seq. (default; enforcement of security interest).

Default; rights and remedies of secured party, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:681-9:685.

Default; rights and remedies of debtor; proceeds from sale of collateral securing guaranteed note properly applied to other indebtedness of borrower, 6 Am. Jur. Pl & Pr Forms, Secured Transactions, Form 9:793.

CJS. 79 C.J.S., Secured Transactions § 144 et seq.

72 C.J.S., Pledges §§ 51 et seq., 56.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

The recent erosion of the secured creditor's rights through cases, rules and statutory changes in bankruptcy law, 53 Miss. L. J. 389, September, 1983.

§ 75-9-602. Waiver and variance of rights and duties.

Except as otherwise provided in Section 75-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Section 75-9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 75-9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 75-9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 75-9-608(a) and 75-9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 75-9-608(a) and 75-9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 75-9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 75-9-610(b), 75-9-611, 75-9-613, and 75-9-614, which deal with disposition of collateral;

(8) Section 75-9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 75-9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 75-9-620, 75-9-621, and 75-9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 75-9-623, which deals with redemption of collateral;

(12) Section 75-9-624, which deals with permissible waivers; and

(13) Sections 75-9-625 and 75-9-626, which deal with the secured party's liability for failure to comply with this article.

SOURCES: Derived from former 1972 Code § 75-9-501 [Codes, 1942, § 41A:9-501; Laws, 1966, ch. 316, § 9-501; Laws, 1977, ch. 452, § 32, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Attachment in chancery, see § 11-31-1 et seq.
Attachment at law, see § 11-33-1 et seq.
Executions, see § 13-3-111 et seq.
Variations of provisions of this Code by agreement, see § 75-1-302.
Collection and enforcement by secured party after default, see § 75-9-607.
Procedures after default: liability for deficiency and right to surplus, see § 75-9-608.
Disposition of collateral after default, see § 75-9-610.
Notification of proposal to accept collateral, see § 75-9-621.
Determination of whether conduct was commercially reasonable, see § 75-9-627.
Right to redeem collateral, see § 75-9-623.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-501(3).
6. Waiver of right to notice.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-501(3).

6. Waiver of right to notice.

Procedures used by creditor to liquidate collateral soybeans were so devoid of any hint of commercial reasonableness that debtor could not be considered to have waived rights to protest disposition of collateral through language of farm storage notes and security agreements. Jones v. United States ex rel. Commodity Credit Corp., 107 B.R. 888 (Bankr. N.D. Miss. 1989).

The provisions set forth in a printed form of assignment of a conditional sales contract waiving notice to the assignor who agreed to repurchase the contract in the event of default is only an attempted waiver, ineffective of the provisions of subd (3) of § 9-504. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

Where (1) plaintiff and his wife purchased used mobile home, (2) plaintiff's father-in-law cosigned security agreement and note as accommodation maker, (3) plaintiff defaulted on payments, (4) plaintiff's father-in-law, with secured party's consent, obtained possession of home, paid off balance due on note, and made repairs on home, (5) secured party obtained repossession title in its name, released security agreement, and transferred repossession title to plaintiff's father-in-law without notifying plaintiff, who was in jail, of either the account delinquency or the subsequent transfer of title, and (6) after plaintiff's release from jail, plaintiff's father-in-law sold home with plaintiff's consent, but did not give accounting of sale or proceeds therefrom to plaintiff, court held (1) that plaintiff did not waive right to notice of disposition of home under UCC § 9-504(3), since UCC § 9-501(3)(b) specifically states that such right cannot be waived; (2) plaintiff's father-in-law, as accommodation maker of note, did not fall within scope of UCC § 9-504(5), dealing with transfers of collateral that are not sales and thus do not require notice to debtor; (3) UCC § 9-504(5) did not contemplate complete extinguishment of plaintiff's right to home, as was done in present case by secured party's transfer of repossession title to plaintiff's father-in-law; and (4) under UCC § 9-507(1) and UCC § 1-103, plaintiff was entitled to damages for conversion of home on basis of benefit to defendant wrongdoers, rather than on basis of allowing full value of home as enhanced by wrongdoers. Western Nat'l Bank v. Harrison, 577 P.2d 635 (Wyo. 1978).

Secured party who proposed after debtor's default to retain collateral in satisfaction of the obligation, but who failed to give debtor written notice of such proposal as required by UCC § 9-505(2), could not retain collateral since waiver of such notice is expressly prohibited by UCC § 9-501(3)(c). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Loan contract which contained provision for waiver of notice of sale of repossessed collateral in violation of UCC § 9-501(3)(b) and § 9-504(3) was not completely void, but merely contained unenforceable provision, where defendant lender did not foreclose on or sell any property of plaintiff debtor and waiver provision was not in any way involved in the litigation between the parties. Lowe v. Termplan, Inc., 144 Ga. App. 671, 242 S.E.2d 268 (1978).

In action by bank seeking recovery under note and commercial equipment security agreement against guarantors, where bank sold collateral upon default prior to giving notice to guarantors and where guaranty agreement expressly waived notice of disposition of collateral, waiver clause was of no effect in that (1) guarantor is a debtor under definition of UCC § 9-105(1)(d), and (2) under UCC § 9-501(3), code provisions covering debtor's rights regarding disposition of collateral and redemption of collateral may not be waived. Barnett v. Barnett Bank, 345 So. 2d 804 (Fla. App. 1977), but see Ayares-Eisenberg Perrine Datsun v. Sun Bank, 455 So. 2d 525 (Fla. Ct. App. 1984).

Where bank loaned debtor money to buy airplanes and loans were secured by such airplanes, and where bank repossessed airplanes because of debtor's failure to make payment, sold them at private sale, and sued guarantors of loans for deficiency judgment under guaranty agreement which unambiguously contained waiver by guarantors that bank could sell or release collateral (airplanes) without notice to guarantors and without affecting their absolute liability, (1) policies underlying UCC § 9-504(3), requiring principal debtor to be given notice of creditor's sale of collateral, would be interpreted as giving guarantor defense to deficiency claim where secured party failed to give principal debtor statutory notice of such sale; (2) such defense was waived by defendant guarantors by express provision in guaranty agreement; and (3) such waiver of notice under UCC § 9-504(3) was not specifically barred by UCC § 9-501(3), since UCC § 9-501(3) applies only to debtors and does not by its terms mandate holding that guarantor is precluded by such section from waiving defense of lack of notice to debtor. First Nat'l Park Bank v. Johnson, 553 F.2d 599 (9th Cir. Mont. 1977).

UCC § 9-504(3), which provides that every aspect of disposition of collateral must be commercially reasonable and that reasonable notification of such disposition must be sent to debtor, cannot be waived, as is expressly declared by UCC 9-501(3)(b). Savings Bank v. Booze, 34 Conn. Supp. 632, 382 A.2d 226 (1977).

Proper interpretation of UCC § 9-501(3)(b), which is in accordance with policy of UCC § 9-504 to protect rights of debtor, is that nonwaiver provision of UCC § 9-501(3) applies both before and after debtor's default. Thus, UCC § 9-501(3)(b) does not allow waiver by debtor of his right under UCC § 9-504(3) to reasonable notification of private sale of collateral after debtor's default on underlying obligation. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

Foreclosure sale of Mack trucks did not come within notification exception of UCC § 9-504 as to goods of type customarily sold on "recognized market"; recognized market within meaning of UCC is most restrictive and might well be stock market or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where prices paid in actual sales of comparable property are currently available by quotation. Furthermore, debtor did not waive right to notice of private sale by requesting creditor to repossess trucks to stop interest accruing on notes; under UCC §§ 9-501 and 9-504 waiver will be permitted only if debtor signs statement after default renouncing or modifying his right to notification of sale. O'Neil v. Mack Trucks, Inc., 533 S.W.2d 832 (Tex. Civ. App. 1975), rev'd, 542 S.W.2d 112 (Tex. 1976), mandate recalled and reissued, 551 S.W.2d 32 (Tex. 1977).

Where bank agreed to advance funds for floor-plan financing of new and used cars to be sold by debtor, where bank repossessed debtor's automobile stock after default pursuant to UCC § 9-503 and where debtor signed default agreement nine days after repossession which waived all notice of terms, times, and places of sale of repossessed automobiles, waiver of notification of sale of collateral following default was valid under UCC § 9-501(3). Teeter Motor Co. v. First Nat'l Bank, 260 Ark. 764, 543 S.W.2d 938 (1976).

RESEARCH REFERENCES

ALR. Title and interest of parties. 10 A.L.R.2d 758.

Purchase by pledgee of subject of pledge. 37 A.L.R.2d 1381.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 467, 482, 483.

Instruction to jury; taking of property by debtor in violation of creditor's rights under security agreement as conversion, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:185.

Default; rights and remedies of secured party; where security interest covers both real and personal property, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:701.

5A Am. Jur. Pl & Pr Forms (Rev), Chattel Mortgages, Forms 51 et seq. (default; enforcement of security interest).

Default; rights and remedies of secured party, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:681-9:685.

Default; rights and remedies of debtor; proceeds from sale of collateral securing guaranteed note properly applied to other indebtedness of borrower, 6 Am. Jur. Pl & Pr Forms, Secured Transactions, Form 9:793.

CJS. 79 C.J.S., Secured Transactions § 144 et seq.

72 C.J.S., Pledges §§ 51 et seq., 56.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

The recent erosion of the secured creditor's rights through cases, rules and statutory changes in bankruptcy law, 53 Miss. L. J. 389, September, 1983.

§ 75-9-603. Agreement on standards concerning rights and duties.

(a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 75-9-602 if the standards are not manifestly unreasonable.

(b) Subsection (a) does not apply to the duty under Section 75-9-609 to refrain from breaching the peace.

SOURCES: Derived from former 1972 Code § 75-9-501 [Codes, 1942, § 41A:9-501; Laws, 1966, ch. 316, § 9-501; Laws, 1977, ch. 452, § 32, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-604. Procedure if security agreement covers real property or fixtures.

(a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

SOURCES: Derived from former 1972 Code §§ 75-9-501 [Codes, 1942, § 41A:9-501; Laws, 1966, ch. 316, § 9-501; Laws, 1977, ch. 452, § 32, eff from and after April 1, 1978] and 75-9-313 [Codes, 1942, § 41A:9-313; Laws, 1966, ch. 316, § 9-313; Laws, 1968, ch. 488, § 1; Laws, 1977, ch. 452, § 22; Laws, 1992, ch. 303, § 1, eff from and after July 1, 1992] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for furture use.]

II. Under Former § 75-9-313(8).

6. Priority as to conflicting interests in fixtures.
7. Priority as to lien creditors.
8. Removal of collateral.

III. Under Former § 75-9-501(4).

9. Proceedings involving both real and personal property.

I. Under Current Law.

1.-5. [Reserved for furture use.]

II. Under Former § 75-9-313(8).

6. Priority as to conflicting interests in fixtures.

Hydraulic lifts installed at gas station prior to lease were fixtures within UCC § 9-313 and alleged lessor which had not filed lease could not prevail as to the lifts over execution levy of trustee in bankruptcy who had no notice of lessor's claimed interest or over purchaser of gas station at bankruptcy sale. Leawood Nat'l Bank v. City Nat'l Bank & Trust Co., 474 S.W.2d 641 (Mo. Ct. App. 1971).

A bank's first mortgage had priority over a security interest arising from the construction of a swimming pool below the surface of the ground covered by the bank's first mortgage, where such pool had become a fixture prior to the advancement of money by the bank claiming the security interest. State Bank v. Kahn, 58 Misc. 2d 655 (1969).

The holder of a chattel mortgage covering after-acquired property who established his security interest by properly filing financing statements takes priority over holder of previously executed conditional sales contract covering the same personal property and fixtures. Cain v. Country Club Delicatessen of Saybrook, Inc., 25 Conn. Supp. 327, 203 A.2d 441 (1964).

7. Priority as to lien creditors.

In action by supplier of air conditioning equipment for diner, to foreclose mechanic's lien and to collect on check issued for cost of air conditioning equipment on which payment had been stopped, diner was real property within meaning of state lien law, notwithstanding that owner of diner and manufacturer-seller of diner had entered into security agreement, pursuant to UCC § 9-313, that diner would remain personal property for financing purposes. Fedders Cent. Air Conditioning Corp. v. Karpinecz & Sons, 83 Misc. 2d 720 (1975).

Historical society's unperfected security interest in station used by debtor railroad was not enforceable against creditor with perfected security interest arising out of recorded mortgage, nor against debtor's trustee in bankruptcy who had status of lien creditor. In re New Hope & I.R.R., 353 F. Supp. 608 (E.D. Pa. 1973).

8. Removal of collateral.

What Code provision relating to security interest in fixtures is aiming at is prevention of substantial destruction of building, such as would be case for instance, if new exterior surface had been installed in place of old one; provision may not prevent removal of aluminum siding which has been added to house, provided house will remain substantially in original state after removal. Dry Dock Sav. Bank v. De Georgio, 61 Misc. 2d 224 (1969) (court recognized that this may turn out to be somewhat Pyrrhic victory, giving lienor pile of dubious scrap not worth labor of getting it off house, repairing nail holes, etc. Whether removal of aluminum siding hurts mortgagee without doing lienor any corresponding good was held to be something for parties to consider and beyond control of court).

Where personal property cannot be removed without causing substantial damage to the freehold the after-acquired property clause of the prior mortgage is superior to the purchase money security interest of the seller of such personal property. Feldzamen v. Paulro Properties, Inc., 4 U.C.C. Rep. Serv. 524 (1967, NY Sup).

III. Under Former § 75-9-501(4).

9. Proceedings involving both real and personal property.

Under UCC § 9-501(1), as explained in Official Comment 6, a secured party is entitled to reduce his claim to judgment or to foreclose his interest by any available procedure outside Art 9 that state law may provide. The first sentence of UCC § 9-501(5) makes clear that any judgment lien that the secured party may acquire against the collateral is a continuation of his original interest (if perfected) and not the acquisition of a new interest or a transfer of property to satisfy an antecedent debt. The judgment lien is therefore said to relate back to the date of perfection of the security interest. The second sentence of UCC § 9-501(5) makes clear that a judicial sale following judgment, execution, and levy is one of the methods of foreclosure contemplated by UCC § 9-501(1). Such a sale is governed by other law and not by Art 9, and the restrictions that Art 9 imposes on the right of a secured party to buy in the collateral at a sale under UCC § 9-504 do not apply. Bilar, Inc. v. Sherman, 40 Colo. App. 38, 572 P.2d 489 (1977).

Where security agreement covered both real and personal property and plaintiff elected to proceed against both, plaintiff's rights and remedies would be determined according to law of foreclosure of interests in real property, and under UCC § 9-501(4), provisions of UCC Art 9 did not apply. State Bank v. Woolsey, 565 P.2d 413 (Utah 1977).

Where bar business was sold by means of two contracts, one involving sale of land and building in which business was conducted and the other involving sale of business itself, bar inventory, and liquor license, and where the personal property sold was covered by security agreement which provided that in event of buyer's default on either contract, buyer would reassign liquor license to seller, such security agreement provision constituted a mutual default clause that was clearly authorized by UCC § 9-501(1). McBride v. Arends, 79 Mich. App. 440, 263 N.W.2d 5 (1977).

Where promissory note was secured by deed of trust on real property and separate security agreement covering personal property, where makers defaulted on promissory note and where creditor brought suit to foreclose deed of trust and security interest, although trial court was correct in limiting creditor's recovery on foreclosure to amount of judgment only, court should have granted creditor's prayer for immediate possession of chattels and authorized creditor to proceed under provisions of UCC § 9-501 et seq. Alexander Dawson, Inc. v. Sage Creek Canyon Co., 37 Colo. App. 339, 546 P.2d 969 (1976).

Where creditor has both real and personal property security, UCC § 9-501 specifies that upon default if creditor proceeds as to both real and personal property security, he must do so according to rights and remedies accorded real property security and not pursuant to UCC, but, although § 9-501(4) is silent on point, such creditor can elect to proceed solely as to personal property under UCC. Walker v. Community Bank, 10 Cal. 3d 729, 518 P.2d 329 (1974).

Code section requiring secured party to give reasonable notification to debtor of its intention to dispose collateral is made inoperative by Code § 9-501(4) with respect to water stock foreclosed as part of real estate security. Kinoshita v. North Denver Bank, 181 Colo. 183, 508 P.2d 1264 (1973).

§ 75-9-605. Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-606. Time of default for agricultural lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-607. Collection and enforcement by secured party.

(a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under Section 75-9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under Section 75-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under Section 75-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

SOURCES: Derived from former 1972 Code § 75-9-502 [Codes, 1942, § 41A:9-502; Laws, 1966, ch. 316, § 9-502; Laws, 1977, ch. 452, § 33, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1; Laws, 2013, ch. 451, § 19, eff from and after July 1, 2013.

Cross References — Rights after default, see § 75-9-601.

Procedures after default: liability for deficiency and right to surplus, see § 75-9-608.
Disposition of collateral after default, see § 75-9-610.
Notification of proposal to accept collateral, see § 75-9-621.
Determination of whether conduct was commercially reasonable, see § 75-9-627.
Right to redeem collateral, see § 75-9-623.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-502.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-502.

6. In general.

Where, under franchising agreement between manufacturer of industrial equipment and manufacturer's franchisee, reserve account was created to aid franchisee in financing sales to customers, court held (1) that if no fiduciary relationship existed between parties, manufacturer was required to handle funds in reserve account in "commercially reasonable manner" required by UCC § 9-502(2); (2) that if fiduciary relationship did exist between parties and if other factors necessary to create constructive trust were present, manufacturer, as trustee of such trust, was required to handle trust (reserve-account funds) in "prudent and proper manner"; (3) that if manufacturer was not trustee and "commercially reasonable manner" standard applied to case, under UCC § 9-507(2), element of price-with regard to sales of repossessed equipment involved in suit-was one factor in determining commercial reasonableness of such sales, although it was not determinative factor; and (4) that whether franchisee had given manufacturer notice of defects in equipment supplied by manufacturer, as required by UCC § 2-607(3)(a), was jury question. Carter Equip. Co. v. John Deere Indus. Equip. Co., 681 F.2d 386 (5th Cir. 1982).

In action by retail furniture dealer which had entered into agreement with defendant financer, under which plaintiff transferred its accounts receivable to defendant in exchange for, being provided with funds in specified proportion to accounts defendant accepted from plaintiff, to recover sums held in reserve account established by parties' agreement, (1) plaintiff's accounts receivable were not sold to defendant, but were transferred to it as collateral security within meaning of UCC § 9-502(2) in exchange for line of credit defendant extended to plaintiff; (2) as a result, under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), defendant was required to account for, and to turn over to plaintiff, any surplus collected by defendant on the transferred accounts, and plaintiff in turn was liable for any deficiency on such accounts; and (3) surplus held by defendant on loan owed by plaintiff and deficiency on such loan were cross-obligations that must be set off against each other. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Under UCC § 9-501(3)(a), debtor's right to surplus under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), in the case of a transfer for security as opposed to a sale, cannot be waived by agreement of the parties. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

UCC § 9-502(2) only applies when secured party attempts to make collections on collateral, either after default or by agreement of the parties. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

In action by bank, as secured party, for deficiency judgment against bond dealer to whom bank had made various loans secured by bonds in which dealer dealt, bank's hasty action, when confronted with a classic "wash sale" or "kiting" situation engaged in by the dealer in a declining bond market, in liquidating bonds held by it as collateral did not violate UCC § 9-502(2), which requires secured party to proceed in commercially reasonable manner in enforcing its collection rights. Bankers Trust Co. v. J.V. Dowler & Co., 62 A.D.2d 778 (1st Dep't 1978), aff'd, 47 N.Y.2d 128, 417 N.Y.S.2d 47, 390 N.E.2d 766 (1979).

Plaintiff bank made loans to the defendant, a dealer in municipal bonds, secured by such bonds and a security agreement permitted plaintiff to sell the collateral without notice, if it deemed itself insecure. Plaintiff advanced moneys to defendant on the basis of 90% of the current market value of unsold municipal bonds held by defendant and 100% of the market value of bonds which had been sold. Defendant, caught in a depressed municipal bond market, entered into a suspect agreement with another bank whereby defendant sold bonds to this bank and agreed to repurchase them at $1 a bond profit for the bank. Defendant informed plaintiff of the sale and received 100% financing on the bonds but plaintiff thereafter discovered the agreement between defendant and the other bank and gave defendant one day to cover the additional collateral which defendant was unable to do whereupon plaintiff sold the bonds it held as collateral which it clearly had the right to do considering the security agreement and the declining municipal bond market. Bankers Trust Co. v. J.V. Dowler & Co., 62 A.D.2d 778 (1st Dep't 1978), aff'd, 47 N.Y.2d 128, 417 N.Y.S.2d 47, 390 N.E.2d 766 (1979).

Bank, which as secured party attempted to collect sums due on account from debtor's shoe customers, was obligated under UCC § 9-502(2) to proceed in commercially reasonable manner and to act in good faith in its collection efforts. Pedi Bares, Inc. v. First Nat'l Bank, 223 Kan. 477, 575 P.2d 507 (1978).

Proceeds from disposition of pledged bonds in excess of amount owed to creditors, who had security interests under UCC §§ 9-203 and 9-204, belonged under UCC §§ 9-502 and 9-504 to debtors, and creditors were not entitled to retain entire collateral under UCC § 9-505 in absence of compliance with notice requirement under UCC § 9-505. Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976).

Where bank took possession of records of creditor's accounts receivable and where bank did not attempt to collect all accounts, but sent two letters on some of them and thereafter took no further action on any of accounts receivable, bank did not sustain burden of proof that it proceeded to liquidate accounts receivable in commercially reasonable manner as required by UCC § 9-502(2). DeLay First Nat'l Bank & Trust Co. v. Jacobson Appliance Co., 196 Neb. 398, 243 N.W.2d 745 (1976). But see Howard Kool Chevrolet v. Blomstedt, 2 Neb. App. 493, 511 N.W.2d 222 (1994).

Where secured party had perfected security interest in all of debtor's present and future accounts and contract rights, including proceeds therefrom, where debtor obtained purchase orders for shoes from buyer and assigned purchase orders to export-import company, and where export-import company performed purchase orders and delivered shoes to buyer, account generated by export-import company's performance of debtor-buyer contract did not constitute "proceeds" of that contract within meaning of UCC § 9-306; thus, secured party did not have right to collect account from buyer under UCC § 9-502(1) but only had claim against export-import company for conversion of contract right, i. e., right to perform purchase orders. American E. India Corp. v. Ideal Shoe Co., 400 F. Supp. 141 (E.D. Pa. 1975), aff'd, 568 F.2d 768 (3d Cir. Pa. 1978).

Under UCC §§ 9-502 and 9-318(3), account debtor was under obligation to make payment to assignee to whom creditor had assigned all of its accounts receivable, instead of making payment directly to creditor, where assignee sent account debtor registered letter that notified debtor that assignee held security agreement with creditor covering all of creditor's accounts receivable and inventory and demanding payment of all monies due to creditor, notwithstanding that at time assignee sent its notice, account debtor's obligation to creditor was not "account" receivable of creditor, in that account debtor had not received creditor's performance which would obligate debtor to make payment. Marine Nat'l Bank v. Airco, Inc., 389 F. Supp. 231 (W.D. Pa. 1975).

Where ex-wife gave bank promissory note secured by security deed on land and bill of sale to secure debt on mobile home, 17 months later bank transferred promissory note and security instruments to borrower's ex-husband without informing her as to transfer, on same day bank reacquired note and collateral securities when ex-husband assigned them to bank as security for present and future debts, ex-wife was informed no further payments were owed, ex-husband refinanced two previous loans by executing promissory note on which he subsequently defaulted, bank was entitled to recover unpaid balance on ex-wife's note through judicial sale of collateral given by ex-wife to secure note. Peters v. Washington Loan & Banking Co., 133 Ga. App. 293, 211 S.E.2d 148 (1974).

UCC § 9-502 relating to a secured party's collection rights applies only to those cases in which the security consists of intangibles, such as accounts or chattel paper, and not, as here, where the collateral is cattle. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

The legislative intent was to restrict the notice provision of UCC § 9-502(1) to those cases in which the security consists of intangibles, such as accounts or chattel paper; where security was not intangible but cattle, protection of security interest in proceeds under UCC § 9-306(3)(a) is not waived by failure to meet notice requirements of UCC § 9-502(1). United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

RESEARCH REFERENCES

ALR. Right of holder of commercial paper to interest or finance charges applicable to period after acceleration of maturity of obligation because of debtor's default. 63 A.L.R.3d 10.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 495-500.

Collateral not owned by debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:81.

Default; collection rights, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:711-9:716.

Collection rights of secured party, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2139 through 253:2141.

Law Reviews. The recent erosion of the secured creditor's rights through cases, rules and statutory changes in bankruptcy law, 53 Miss. L. J. 389, September, 1983.

§ 75-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 75-9-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 75-9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

SOURCES: Derived from former 1972 Code § 75-9-502 [Codes, 1942, § 41A:9-502; Laws, 1966, ch. 316, § 9-502; Laws, 1977, ch. 452, § 33, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-502(2).

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-502(2).

6. In general.

Where, under franchising agreement between manufacturer of industrial equipment and manufacturer's franchisee, reserve account was created to aid franchisee in financing sales to customers, court held (1) that if no fiduciary relationship existed between parties, manufacturer was required to handle funds in reserve account in "commercially reasonable manner" required by UCC § 9-502(2); (2) that if fiduciary relationship did exist between parties and if other factors necessary to create constructive trust were present, manufacturer, as trustee of such trust, was required to handle trust (reserve-account funds) in "prudent and proper manner"; (3) that if manufacturer was not trustee and "commercially reasonable manner" standard applied to case, under UCC § 9-507(2), element of price-with regard to sales of repossessed equipment involved in suit-was one factor in determining commercial reasonableness of such sales, although it was not determinative factor; and (4) that whether franchisee had given manufacturer notice of defects in equipment supplied by manufacturer, as required by UCC § 2-607(3)(a), was jury question. Carter Equip. Co. v. John Deere Indus. Equip. Co., 681 F.2d 386 (5th Cir. 1982).

In action by retail furniture dealer which had entered into agreement with defendant financer, under which plaintiff transferred its accounts receivable to defendant in exchange for, being provided with funds in specified proportion to accounts defendant accepted from plaintiff, to recover sums held in reserve account established by parties' agreement, (1) plaintiff's accounts receivable were not sold to defendant, but were transferred to it as collateral security within meaning of UCC § 9-502(2) in exchange for line of credit defendant extended to plaintiff; (2) as a result, under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), defendant was required to account for, and to turn over to plaintiff, any surplus collected by defendant on the transferred accounts, and plaintiff in turn was liable for any deficiency on such accounts; and (3) surplus held by defendant on loan owed by plaintiff and deficiency on such loan were cross-obligations that must be set off against each other. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Under UCC § 9-501(3)(a), debtor's right to surplus under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), in the case of a transfer for security as opposed to a sale, cannot be waived by agreement of the parties. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

UCC § 9-502(2) only applies when secured party attempts to make collections on collateral, either after default or by agreement of the parties. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Where secured party had perfected security interest in all of debtor's present and future accounts and contract rights, including proceeds therefrom, where debtor obtained purchase orders for shoes from buyer and assigned purchase orders to export-import company, and where export-import company performed purchase orders and delivered shoes to buyer, account generated by export-import company's performance of debtor-buyer contract did not constitute "proceeds" of that contract within meaning of UCC § 9-306; thus, secured party did not have right to collect account from buyer under UCC § 9-502(1) but only had claim against export-import company for conversion of contract right, i. e., right to perform purchase orders. American E. India Corp. v. Ideal Shoe Co., 400 F. Supp. 141 (E.D. Pa. 1975), aff'd, 568 F.2d 768 (3d Cir. Pa. 1978).

In action by bank, as secured party, for deficiency judgment against bond dealer to whom bank had made various loans secured by bonds in which dealer dealt, bank's hasty action, when confronted with a classic "wash sale" or "kiting" situation engaged in by the dealer in a declining bond market, in liquidating bonds held by it as collateral did not violate UCC § 9-502(2), which requires secured party to proceed in commercially reasonable manner in enforcing its collection rights. Bankers Trust Co. v. J.V. Dowler & Co., 62 A.D.2d 778 (1st Dep't 1978), aff'd, 47 N.Y.2d 128, 417 N.Y.S.2d 47, 390 N.E.2d 766 (1979).

Plaintiff bank made loans to the defendant, a dealer in municipal bonds, secured by such bonds and a security agreement permitted plaintiff to sell the collateral without notice, if it deemed itself insecure. Plaintiff advanced moneys to defendant on the basis of 90% of the current market value of unsold municipal bonds held by defendant and 100% of the market value of bonds which had been sold. Defendant, caught in a depressed municipal bond market, entered into a suspect agreement with another bank whereby defendant sold bonds to this bank and agreed to repurchase them at $1 a bond profit for the bank. Defendant informed plaintiff of the sale and received 100% financing on the bonds but plaintiff thereafter discovered the agreement between defendant and the other bank and gave defendant one day to cover the additional collateral which defendant was unable to do whereupon plaintiff sold the bonds it held as collateral which it clearly had the right to do considering the security agreement and the declining municipal bond market. Bankers Trust Co. v. J.V. Dowler & Co., 62 A.D.2d 778 (1st Dep't 1978), aff'd, 47 N.Y.2d 128, 417 N.Y.S.2d 47, 390 N.E.2d 766 (1979).

Bank, which as secured party attempted to collect sums due on account from debtor's shoe customers, was obligated under UCC § 9-502(2) to proceed in commercially reasonable manner and to act in good faith in its collection efforts. Pedi Bares, Inc. v. First Nat'l Bank, 223 Kan. 477, 575 P.2d 507 (1978).

Proceeds from disposition of pledged bonds in excess of amount owed to creditors, who had security interests under UCC §§ 9-203 and 9-204, belonged under UCC §§ 9-502 and 9-504 to debtors, and creditors were not entitled to retain entire collateral under UCC § 9-505 in absence of compliance with notice requirement under UCC § 9-505. Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976).

Where bank took possession of records of creditor's accounts receivable and where bank did not attempt to collect all accounts, but sent two letters on some of them and thereafter took no further action on any of accounts receivable, bank did not sustain burden of proof that it proceeded to liquidate accounts receivable in commercially reasonable manner as required by UCC § 9-502(2). DeLay First Nat'l Bank & Trust Co. v. Jacobson Appliance Co., 196 Neb. 398, 243 N.W.2d 745 (1976). But see Howard Kool Chevrolet v. Blomstedt, 2 Neb. App. 493, 511 N.W.2d 222 (1994).

Under UCC §§ 9-502 and 9-318(3), account debtor was under obligation to make payment to assignee to whom creditor had assigned all of its accounts receivable, instead of making payment directly to creditor, where assignee sent account debtor registered letter that notified debtor that assignee held security agreement with creditor covering all of creditor's accounts receivable and inventory and demanding payment of all monies due to creditor, notwithstanding that at time assignee sent its notice, account debtor's obligation to creditor was not "account" receivable of creditor, in that account debtor had not received creditor's performance which would obligate debtor to make payment. Marine Nat'l Bank v. Airco, Inc., 389 F. Supp. 231 (W.D. Pa. 1975).

Where ex-wife gave bank promissory note secured by security deed on land and bill of sale to secure debt on mobile home, 17 months later bank transferred promissory note and security instruments to borrower's ex-husband without informing her as to transfer, on same day bank reacquired note and collateral securities when ex-husband assigned them to bank as security for present and future debts, ex-wife was informed no further payments were owed, ex-husband refinanced two previous loans by executing promissory note on which he subsequently defaulted, bank was entitled to recover unpaid balance on ex-wife's note through judicial sale of collateral given by ex-wife to secure note. Peters v. Washington Loan & Banking Co., 133 Ga. App. 293, 211 S.E.2d 148 (1974).

UCC § 9-502 relating to a secured party's collection rights applies only to those cases in which the security consists of intangibles, such as accounts or chattel paper, and not, as here, where the collateral is cattle. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

The legislative intent was to restrict the notice provision of UCC § 9-502(1) to those cases in which the security consists of intangibles, such as accounts or chattel paper; where security was not intangible but cattle, protection of security interest in proceeds under UCC § 9-306(3)(a) is not waived by failure to meet notice requirements of UCC § 9-502(1). United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

RESEARCH REFERENCES

ALR. Right of holder of commercial paper to interest or finance charges applicable to period after acceleration of maturity of obligation because of debtor's default. 63 A.L.R.3d 10.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 495-500.

Collateral not owned by debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:81.

Default; collection rights, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:711-9:716.

Collection rights of secured party, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2139 through 253:2141.

Law Reviews. The recent erosion of the secured creditor's rights through cases, rules and statutory changes in bankruptcy law, 53 Miss. L. J. 389, September, 1983.

§ 75-9-609. Secured party's right to take possession after default.

(a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 75-9-610.

(b) A secured party may proceed under subsection (a):

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

SOURCES: Derived from former 1972 Code § 75-9-503 [Codes, 1942, § 41A:9-503; Laws, 1966, ch. 316, § 9-503, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Replevin, generally, see § 11-37-101 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. Breach of peace.
2.-5. [Reserved for future use.]

II. Under Former § 75-9-503.

6. In general.
7. Self help repossession, generally.
8. —Constitutional issues.
9. —Constitutional issues; state action.
10. —Constitutional issues; denial of due process.
11. —Breach of peace.
12. —Conversion.
13. —Trespass and other criminal or tortious actions.
14. —Liability of secured party for tortious acts committed during repossession.
15. —Agreements as to notice prior to repossession.
16. —Right of secured party to repossession; particular applications.
17. Repossession by action, generally.
18. —Particular applications.
19. —Particular applications; after bankruptcy of debtor.
20. Obligation to assemble collateral or make it available.
21. Time and place of repossession.
22. Resale of collateral by secured party.
23. Sale of collateral by debtor or third party.
24. Priorities among creditors.

I. Under Current Law.

1. Breach of peace.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Ann. § 75-9-609(a)(1),(b)(2); the judge blocked the tow truck's travel and attempted to use his office to intimidate officers at the scene. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

Summary judgment was properly granted to a creditor and others in a case arising from the repossession of a car from the parents of a deceased debtor because such action was justified under Miss. Code Ann. § 75-9-609 since there was no breach of the peace; the persons repossessing the car were invited in, and a mother did not feel threatened. Mullen v. Am. Honda Fin. Corp., 952 So. 2d 309 (Miss. Ct. App. 2007).

Repossessor was not "in the process" of repossession for the purposes of recovering damages for breaching the peace when no one was present when the equipment was removed from the debtor's property and any confrontation that took place occurred 57 miles away on a state highway when the debtor confronted the repossessor. Ellis Contr., Inc. v. Komatsu Fin., 906 So. 2d 805 (Miss. Ct. App. 2004).

2.-5. [Reserved for future use.]

II. Under Former § 75-9-503.

6. In general.

Where (1) seller sold portable building and air cooler to buyer for large down payment and small balance, which buyer allegedly failed to pay when it became due, and (2) seller repossessed the property, even though buyer and seller had not executed security agreement designating it as collateral for balance due, court held (1) that since property had been unconditionally delivered to buyer, buyer was entitled to retain possession thereof, even though he still owed part of purchase price, and (2) that allegations of seller's motion for new trial did not establish that his repossession was justified, either at common law or under the Uniform Commercial Code (see UCC § 9-503). Gardner v. Jones, 570 S.W.2d 198 (Tex. Civ. App. 1978).

There is nothing unconscionable in a contract clause that authorizes repossession of a chattel on default. Indeed, UCC § 9-503 specifically authorizes such self-help remedy on condition that it is carried out without breach of the peace. Furthermore, an established course of dealing under which the debtor makes continual late payments and the secured party accepts them does not result in a waiver of the secured party's right to rely on a clause in the agreement that authorizes him to declare a default and to repossess the chattel. However, even though no outright waiver of the secured party's right to rely on such a clause occurs by a course of dealing involving the acceptance of late payments, if the secured party has not insisted on strict compliance in the past and has accepted late payments as a matter of course, he must, before he can validly rely on such a clause to declare a default and effect repossession, give notice to the debtor that strict compliance with the terms of the contract will henceforth be required to avoid repossession. Nevada Nat'l Bank v. Huff, 94 Nev. 506, 582 P.2d 364 (1978).

Seller with perfected security interest was entitled to immediate possession of collateral upon default, notwithstanding express right to immediate possession did not appear in default provisions of contract, since UCC § 9-503 grants that right to secured party upon buyer's default. MGD Graphic Sys. v. New York Press Publishing Co., 52 A.D.2d 815 (1st Dep't 1976), aff'd, 42 N.Y.2d 1018, 398 N.Y.S.2d 657, 368 N.E.2d 835 (1977).

Where debtor failed to make five installment payments and secured party sent debtor written notice of default, where, under terms of installment sales agreement, debtor was in default ten days after it received such notice, and where defendant had not paid arrearages in full when secured party elected to accelerate amount due on promissory note, debtor's subsequent effort to pay arrearages was insufficient to prevent default, since obligation then amounted to full unpaid balance of note, and was ineffective to cut off secured party's right to possession of equipment. Honeywell Info. Sys. v. Demographic Sys., 396 F. Supp. 273 (S.D.N.Y. 1975).

Secured party did not have repossession right provided by UCC § 9-503 where collateral was subject to conditional sales contract governed by pre-code law and debtor's interest in collateral had been forfeited thereunder. Barnett v. Everett Trust & Sav. Bank, 13 Wash. App. 332, 534 P.2d 836 (1975).

Provision of motor vehicle retail installment sales act requiring, under certain circumstances, election between alternative remedies was in conflict with cumulative remedies provided in UCC §§ 9-503 and 9-504, and therefore, pursuant to UCC § 9-203(4), which provides that where there is any conflict between provisions of Article 9 of Uniform Commercial Code and provisions of motor vehicle retail installment sales act, provisions of latter statute shall apply, creditor with security interest in automobile was limited to election required by such statute where conditions precedent to applicability of statute had been met. Chicago City Bank & Trust Co. v. Anderson, 26 Ill. App. 3d 421, 325 N.E.2d 701 (1st Dist. 1975).

No repossession was involved under UCC § 9-503 where purchaser of automobile that was subject to security interest voluntarily brought it to repairman for repair work, repairman retained possession of auto pursuant to valid mechanic's lien acquired as result of its labor, and after purchaser defaulted in his payments to secured party, secured party assigned its interest to repairman; since there was no repossession, there was no occasion to consider whether UCC § 9-503 was unconstitutional. Chrysler Credit Corp. v. Gillaspie, 24 Ill. App. 3d 620, 321 N.E.2d 509 (1st Dist. 1974).

Repossession of mobile home in accordance with UCC § 9-503 and conditional sales contract provision authorizing secured party's repossession upon default was not action "under color of state law." Shelton v. GECC, 359 F. Supp. 1079 (M.D. Ga. 1973).

In absence of provision in security agreement to contrary, secured party is granted right to take possession of property securing indebtedness upon default by mortgagor. Kirkman v. North State Bank, 476 S.W.2d 958 (Tex. Civ. App. 1972), ref. n.r.e (July 12, 1972).

Secured creditor under mortgage of motor vehicle is given, on default, statutory right to immediate possession of motor vehicle. Platte Valley Bank v. Kracl, 185 Neb. 168, 174 N.W.2d 724 (1970).

There is no authority to support the contention of judgment creditors holding liens subordinate to the lien of the holder of a perfected security interest in the debtor's inventory that the latter owes a duty to merchandise creditors to demand repayment and to foreclose on its lien at the first instance it believes, or has cause to believe, that the debtor cannot repay his loan, or risk losing its security if it fails to do so. William Iselin & Co. v. Burgess & Leigh Ltd., 52 Misc. 2d 821 (1967).

Upon default in payments due on the indebtedness secured by a perfected interest, the holder became entitled to immediate possession of the security with the right to sell the same. William Iselin & Co. v. Burgess & Leigh Ltd., 52 Misc. 2d 821 (1967).

Since the UCC has abolished the technical distinctions between the various security devices, the federal bankruptcy courts should no longer feel compelled to engage in the purely theoretical exercise of locating "title"; nor should considerations of where "title lies" influence the courts in the exercise of their equitable discretion in ruling upon a security holder's petition for reclamation of collateral. In re Yale Express Sys., 370 F.2d 433 (2d Cir. N.Y. 1966).

It does not matter whether the security agreement is in the form of a chattel mortgage or a conditional sales contract since the enactment of the UCC; for in either case the secured party has the right upon default to take possession of the collateral and to sell, lease or otherwise dispose of it, applying the proceeds to the indebtedness. In re Yale Express Sys., 370 F.2d 433 (2d Cir. N.Y. 1966).

Federal law rather than state law would control an action based upon an alleged conversion by an auctioneer by sale at public auction of cattle against which the Farmers Home Administration had a recorded security agreement executed in its favor by the owner of the cattle. United States v. Sommerville, 324 F.2d 712 (3d Cir. Pa. 1963), cert. denied, 376 U.S. 909, 84 S. Ct. 663, 11 L. Ed. 2d 608 (1964).

Where the conditional buyer of an automobile breached one of the warranties contained in the security agreement by registering the vehicle in the name of a fictitious corporation, the buyer was in default and the holder of the security agreement had the right to immediate possession of the collateral. Natick Trust Co. v. Bay State Truck Lease, Inc., 28 Mass. App. Dec. 60 (1963).

7. Self help repossession, generally.

A creditor must do more than cause a mere breach of peace in conducting self help repossession before he or she can be held liable for punitive damages; a breach of peace may be deemed tortious-for which the creditor will be held liable for actual and consequential damages-but the tortiousness of the conduct must rise to a heightened level before punitive damages may be imposed. Ivy v. GMAC, 612 So. 2d 1108 (Miss. 1992).

There is nothing unconscionable in a contract clause that authorizes repossession of a chattel on default. Indeed, UCC § 9-503 specifically authorizes such self-help remedy on condition that it is carried out without breach of the peace. Furthermore, an established course of dealing under which the debtor makes continual late payments and the secured party accepts them does not result in a waiver of the secured party's rights to repossess. Gardner v. Jones, 570 S.W.2d 198 (Tex. Civ. App. 1978).

On debtor's breach of terms and conditions of inventory-financing security agreement with secured party, secured party was entitled to resort to remedies provided both by security agreement and by UCC § 9-503, which gives secured party right to take possession of collateral after default. GECC v. Marcella's Appliances Sales & Servs., Inc., 66 A.D.2d 927 (3d Dep't 1978).

Where note was accompanied by security agreement which granted security interest in all property of debtor in secured party's possession as security for all obligations owed by debtor, secured party, on default on note, clearly had right under UCC § 9-503 to take possession of all property of debtor in secured party's possession, and exercise of this right did not result in conversion of such collateral by secured party, since situation did not involve applicability of UCC § 9-505(1), which provides that if debtor has paid 60 percent of loan, secured party who has taken possession of collateral consisting of consumer goods must dispose of such collateral within 90 days or face liability for conversion. Keller v. La Rissa, Inc., 60 Haw. 1, 586 P.2d 1017 (1978).

Provision of instalment contract granting secured party right to repossess secured automobile without judicial process was permitted by Code § 9-503 and was not unconscionable. Frost v. Mohawk Nat'l Bank, 74 Misc. 2d 912 (1973).

No commencement of judicial action is required prior to taking possession of security under UCC § 9-503. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

Upon default, secured party had right to take possession of collateral in accordance with UCC § 9-503, without making demand upon defaulting debtors. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

8. —Constitutional issues.

Self-help repossession provided for by UCC § 9-503 is constitutional. Eustice v. Brazille, 567 P.2d 92 (Okla. 1977).

Self-help repossession procedures of UCC § 9-503 are constitutional. Hunt v. Marine Midland Bank-Central, 80 Misc. 2d 329 (1974).

UCC § 9-503 was not unconstitutional as applied to repossession and sale of combine where creditor gave debtor every opportunity to avoid default and resorted to repossession only after debtor refused to make any effort to pay and was informed that creditor had choice but to repossess combine. John Deere Co. v. Catalano, 186 Colo. 101, 525 P.2d 1153 (1974).

9. —Constitutional issues; state action.

Fact that Arizona's enactment of UCC §§ 9-503 and 9-504 greatly changed Arizona law, rather than merely codifying a preexisting common-law right, did not, in absence of further indications of government involvement, establish state action in violation of debtor's right under Fourteenth Amendment to procedural due process, so as to give debtor, whose collateral was sold by creditor at foreclosure sale, right of action under 42 USCS § 1983. Bosse v. Crowell, Collier & MacMillan, 565 F.2d 602 (9th Cir. Ariz. 1977).

Washington UCC § 9-503, authorizing self-help repossession of collateral without notice or judicial hearing, does not deprive persons of property without due process of law in contravention of either Fourteenth Amendment to United States Constitution or Article 1, section 3 of constitution of state of Washington, since state officials are not involved in the private remedy that is allowed to creditor by debtor under the self-help statute. Mount Vernon Dodge, Inc. v. Seattle-First Nat'l Bank, 18 Wash. App. 569, 570 P.2d 702 (1977).

Repossession of automobile by secured party pursuant to provisions of UCC § 9-503 did not violate due process clause of Fourteenth Amendment; no state action was involved in repossession since it was accomplished pursuant to provisions in contract authorizing such remedy in case of default and this type of creditor's self-help was recognized long before UCC § 9-503 was enacted. Speigle v. Chrysler Credit Corp., 56 Ala. App. 469, 323 So. 2d 360 (Civ. App. 1975), cert. denied, 295 Ala. 420, 323 So. 2d 367 (1975).

UCC § 9-503, authorizing self-help repossession of collateral without notice or hearing, does not violate due process; enactment of UCC § 9-503 was not, in and of itself, sufficient state action to compel invocation of Fourteenth Amendment due process clause. Faircloth v. Old Nat'l Bank, 86 Wash. 2d 1, 541 P.2d 362 (1975), appeal dismissed, 425 U.S. 986, 96 S. Ct. 2195, 48 L. Ed. 2d 812 (1976).

Self-help repossession provisions of UCC § 9-503 do not violate constitutional due process because no state action is present when state passes law which: (a) does not change common law or previously codified statutory law; (b) does not significantly encourage and involve state in private action; and (c) does not involve any state official in prejudgment self-help repossession of collateral. Benschoter v. First Nat'l Bank, 218 Kan. 144, 542 P.2d 1042 (1975), appeal dismissed, 425 U.S. 928, 96 S. Ct. 1656, 48 L. Ed. 2d 170 (1976).

Self-help repossession provision, UCC § 9-503, does not involve state action and is not, therefore, subject to due process requirements of state and federal constitutions. Furthermore, where debtor failed to prove that he was damaged in any respect as result of repossession of collateral, it was unnecessary to consider contention that manner in which part of equipment was repossessed constituted breach of peace and that repossession was therefore unauthorized under UCC § 9-503. Borg-Warner Acceptance Corp. v. Scott, 86 Wash. 2d 276, 543 P.2d 638 (1975).

Self-help repossession pursuant to UCC § 9-503 does not constitute state action within meaning of due process clause of Fourteenth Amendment. Hill v. Michigan Nat'l Bank, 58 Mich. App. 430, 228 N.W.2d 407 (1975).

UCC § 9-503 was free from Federal Due Process scrutiny in civil rights action for lack of requisite state action, despite evidence to indicate that in repossessing plaintiff's washing machine, repossessors broke into his home. Calderon v. United Furn. Co., 505 F.2d 950 (5th Cir. Tex. 1974).

Repossession of automobile pursuant to UCC § 9-503 was not action under color of state law where enactment of UCC provision merely codified pre-existing state law. Gary v. Darnell, 505 F.2d 741 (6th Cir. Ky. 1974).

Automobile dealer's peaceful repossession of automobile from purchaser after default in conditional sales contract under provisions of UCC § 9-503 did not constitute action under color of state law within meaning of Civil Rights Act nor state action within meaning of due process clause of Fourteenth Amendment. Turner v. Impala Motors, 503 F.2d 607 (6th Cir. Tenn. 1974).

Where contract contains default and repossession provisions, private repossession is not infused with "state action" merely because state enacts §§ 9-503 and 9-504 of UCC. Gibbs v. Titelman, 502 F.2d 1107, 29 A.L.R. Fed. 406 (3d Cir. Pa. 1974), cert. denied, 419 U.S. 1039, 95 S. Ct. 526, 42 L. Ed. 2d 316 (1974).

Self-help repossession under UCC §§ 9-503 and 9-504 does not constitute sufficient state involvement to invoke jurisdiction of federal courts. Nowlin v. Professional Auto Sales, Inc., 496 F.2d 16 (8th Cir. Mo. 1974), cert. denied, 419 U.S. 1006, 95 S. Ct. 328, 42 L. Ed. 2d 283 (1974).

Self-help repossession under UCC § 9-503 does not constitute sufficient state action to confer federal jurisdiction. James v. Pinnix, 495 F.2d 206 (5th Cir. 1974).

Code §§ 9-503 and 9-504 providing for summary repossession and sale of collateral do not involve sufficient state action or conduct under color of state law required to establish a federal cause of action. Adams v. Southern Cal. First Nat'l Bank, 492 F.2d 324 (9th Cir. Cal. 1973), cert. denied, 419 U.S. 1006, 95 S. Ct. 325, 42 L. Ed. 2d 282 (1974).

Repossession and sale of collateral by secured party under UCC §§ 9-503 and 9-504 without giving debtor notice and hearing did not constitute state action and, hence, could not form basis for relief under Federal Civil Rights Act. Teitelbaum v. Scranton Nat'l Bank, 384 F. Supp. 1139, 34 A.L.R. Fed. 535 (M.D. Pa. 1974).

Action of secured party in repossessing collateral in accord with UCC § 9-503 was not action "under color of law" as that phrase is used in Civil Rights Act. McDuffy v. Worthmore Furn., Inc., 380 F. Supp. 257 (E.D. Va. 1974).

The self-help repossession statutes do not constitute sufficient state action to confer federal jurisdiction over action seeking declaration of unconstitutionality. Thompson v. Keesee, 375 F. Supp. 195 (E.D. Ky. 1974).

Enactment of UCC §§ 9-503 and 9-504, providing for self-help repossession of mortgaged vehicle, did not constitute "state action" for purpose of determining constitutionality of procedure; nor did repossession of vehicle deprive buyer of any right of possession or ownership where buyer had voluntarily abandoned those rights by returning vehicle and rejecting it for alleged defect under UCC § 2-602. Mayhugh v. Bill Allen Chevrolet, 371 F. Supp. 1 (W.D. Mo. 1973), aff'd, 496 F.2d 16 (8th Cir. Mo. 1974), cert. denied, 419 U.S. 1006, 95 S. Ct. 328, 42 L. Ed. 2d 283 (1974).

Self-help repossession authorized by UCC §§ 9-503 and 9-504 did not violate Fourteenth Amendment, where repossession did not constitute state action, self-help provisions were sufficiently fair to all parties, and purchasers agreed to remedy of repossession in contract which was one consideration for contract to finance purchase. Cook v. Lilly, 158 W. Va. 99, 208 S.E.2d 784 (1974).

Repossession of automobile by secured creditor after default in payment, pursuant to UCC § 9-503, was private contractual matter rather than state action and thus did not violate debtor's Fourteenth Amendment rights. King v. South Jersey Nat'l Bank, 66 N.J. 161, 330 A.2d 1, 75 A.L.R.3d 1030 (1974).

Bank's repossession of automobile under conditional sales contract on debtor's failure to make required payment did not constitute action by state depriving debtor of property without due process of law in violation of Fourteenth Amendment. Though UCC § 9-503 recognizes right of self-help repossession of collateral, state personnel are not involved in act, and right of repossession is not creature of statute, but existed at common law. Moreover, right to deficiency judgment set forth in UCC § 9-504 is distinct from process of seizure, and its allowance does not affect nature of repossession procedure as one continuing from common law. Kipp v. Cozens, 40 Cal. App. 3d 709 (1st Dist. 1974).

Defendant, who repossessed collateral covered by security agreement pursuant to UCC § 9-503, did not act under color of state law for purposes of invoking Civil Rights Act, nor was there "state action" within meaning of Fourteenth Amendment. Kinch v. Chrysler Credit Corp., 367 F. Supp. 436 (E.D. Tenn. 1973).

State, by adopting UCC §§ 9-503 and 9-504, could not be held responsible for creating conditions which resulted in standardized contracts that are typically used in credit industry and provide for self-help repossession without notice or hearing prior to seizure; hence defendants' self-help repossession and sale of plaintiff's furniture, household goods and automobile pursuant to terms of agreement making said items security for repayment of loan, as authorized by UCC, were not actions "under color of state law" sufficient to give federal court jurisdiction under Civil Rights Act. Johnson v. Associates Fin., Inc., 365 F. Supp. 1380 (S.D. Ill. 1973).

The finance companies that repossessed automobiles under UCC § 9-503 without notice to debtors and without judicial process acted under color of state law; hence, federal district court had jurisdiction over actions by debtors under 42 USC § 1983, claiming that self-help repossession under UCC § 9-503 violated due process guarantee of Fourteenth Amendment. Boland v. Essex County Bank & Trust Co., 361 F. Supp. 917 (D. Mass. 1973).

Self-help repossession by creditor does not constitute state action for purposes of invoking due process clause of Fourteenth Amendment, and UCC § 9-503, which authorizes secured party to take possession of collateral after default, but only if it can be attained peacefully without breach of peace, when considered in connection with UCC §§ 9-504 through 9-507, which contain provisions designed to insure that creditor cannot exercise his contract rights in manner which enables him to profit from buyer's default, is not an unconstitutional deprivation of property without due process of law in violation of Fourteenth Amendment. Northside Motors, Inc. v. Brinkley, 282 So. 2d 617 (Fla. 1973).

Code § 9-503 authorizing self-help repossession does not constitute creation by State of new right in secured creditor which he would not theretofore have had but for statute, but rather it is merely statutory recognition of century-old law that if parties so provide in their agreement, secured party may privately retake his collateral upon default by private means and without necessity of judicial action, provided he can do so peacefully; accordingly private repossession pursuant to contract, in accordance with Code § 9-503, is not conduct "impregnated with a governmental character" to such extent as would cause it to fall under Fourteenth Amendment coverage of state action. Giglio v. Bank of Del., 307 A.2d 816 (Del. Ch. 1973).

State authorization, under UCC § 9-503, of private self-help repossessions is not sufficient state involvement in private acts of individuals to constitute "state action" necessary to invoke Due Process Clause of Fourteenth Amendment. Brown v. United States Nat'l Bank, 265 Or. 234, 509 P.2d 442 (1973).

Since state's only real "involvement" in private repossessions by secured parties is statutory authorization of those repossessions, existence of UCC § 9-503 and other related statutes does not sufficiently involve state in acts of secured parties or their acts to constitute action "under color of" state law, within meaning of federal statutes. Kirksey v. Theilig, 351 F. Supp. 727 (D. Colo. 1972).

Federal District Court had no jurisdiction over action seeking declaration of unconstitutionality of UCC § 9-503, which permits peaceful repossession of secured goods without judicial process, since repossession by individual defendants represented no state action. Pease v. Havelock Nat'l Bank, 351 F. Supp. 118 (D. Neb. 1972).

Code § 9-503 which allows a secured party to take possession of collateral without judicial intervention if it can be done without breach of peace did not violate Fourteenth Amendment, where operation of statute did not require aid, assistance, or interaction of any state agent, body, organization, or function. Greene v. First Nat'l Exch. Bank, 348 F. Supp. 672 (W.D. Va. 1972).

Codification of practice of self-help recaption by enactment of Code § 9-503 cannot so give that practice color of state law as to take it out of private area and make it subject to Fourteenth Amendment. Messenger v. Sandy Motors, Inc., 121 N.J. Super. 1, 295 A.2d 402 (Ch. Div. 1972).

10. —Constitutional issues; denial of due process.

Self-help repossession permitted by UCC § 9-503 is not tantamount to taking property without due process of law, since protection of procedural due process does not extend beyond perimeter of state action into realm of private parties' contractual remedies that are enforced without the persons or powers of government.

McComb Equip. Co. v. Cooper, 370 So. 2d 1367 (Miss. 1979).

Statutory replevin remedy (UCC § 9-503) does not deny due process. Lawson v. Mantell, 62 Misc. 2d 307 (1969).

11. —Breach of peace.

Possibility existed that debtor could recover, under Mississippi law, on breach of peace claim against collection agency that repossessed his vehicle; therefore, agency failed to prove that debtor fraudulently joined it in removed state action against lender and agency to destroy diversity jurisdiction, as required to establish federal jurisdiction. Branson v. Nissan Motor Acceptance Corp., 963 F. Supp. 595 (S.D. Miss. 1996).

Simply going upon the private driveway of the debtor and taking possession of the secured collateral, without more, does not constitute a breach of the peace; this, however, is the limit of the right to repossess without instituting legal action. Hester v. Bandy, 627 So. 2d 833 (Miss. 1993).

A debtor's attempt to physically resist a repossessor's attempted repossession of a van from the debtor's residence in the early morning hours terminated the repossessor's right to continue because in doing so he caused a breach of the peace. Hester v. Bandy, 627 So. 2d 833 (Miss. 1993).

A "breach of peace" occurred when a creditor's agents repossessed a delinquent debtor's van pursuant to § 75-9-503 where the debtor saw the creditor's agents towing away the van, the debtor chased the agents in his truck, and the debtor "slammed on his brakes" when he pulled in front of the tow truck, resulting in a "slight" collision when the tow truck was unable to stop; however, the creditor's agents' conduct in repossessing the van did not rise to the requisite heightened level of tortiousness to warrant imposition of punitive damages. Ivy v. GMAC, 612 So. 2d 1108 (Miss. 1992).

Unauthorized entry onto driveway of debtor's residence by secured creditor to remove or repossess vehicle did not constitute breach of peace, despite argument that entering private driveway to repossess vehicle without use of force is breach of peace because it constitutes trespass. Butler v. Ford Motor Credit Co., 829 F.2d 568 (5th Cir. 1987).

Contention that secured party committed breach of the peace under UCC § 9-503 in effecting self-help repossession of collateral could not be sustained where plaintiff's own testimony showed that force, fraud, or breach of the peace did not occur, and that repossession took place at night when debtor was asleep and unaware of its occurrence. Robertson v. Union Planters Nat'l Bank, 561 S.W.2d 901 (Tex. Civ. App. 1978), ref. n.r.e (July 5, 1978).

Where seller on buyer's default (1) repossessed buyer's car, which buyer had driven to seller's place of business, by "blocking it in" with another vehicle over buyer's unequivocal protest, and (2) informed buyer that he could just "walk his ass home," jury could properly find that seller's combined acts of "blocking in" car and speaking to buyer in offensive and insulting language were sufficiently provocative of violence to constitute a breach of the peace under UCC § 9-503. Deavers v. Standridge, 144 Ga. App. 673, 242 S.E.2d 331 (1978).

Fact that, in repossessing automobile, credit company's employee may have lied to service station operator who had possession of automobile, telling him that owner of car had consented to repossession, did not constitute "breach of the peace" making its repossession wrongful. Thompson v. Ford Motor Credit Co., 550 F.2d 256 (5th Cir. Ala. 1977).

To determine whether breach of the peace within meaning of UCC § 9-503 has occurred, courts will mainly inquire (1) whether there was entry by creditor on debtor's premises, and (2) whether debtor or one acting on his behalf consented to the entry and repossession. Ordinarily, the creditor may not enter the debtor's home or garage without permission, but he can probably take a car from the debtor's driveway without incurring liability. The debtor's consent, freely given, legitimates any entry; conversely, the debtor's physical objection bars repossession, even from a public street. Marine Midland Bank-Central v. Cote, 351 So. 2d 750 (Fla. App. 1977).

Under UCC § 9-503, creditor's limited privilege to enter on debtor's land must be exercised without any breach of the peace. Marine Midland Bank-Central v. Cote, 351 So. 2d 750 (Fla. App. 1977).

There was no breach of peace where secured creditor banks, with aid of armed guards, seized aircraft belonging to reorganization debtor. In re Flying W Airways, Inc., 341 F. Supp. 26 (E.D. Pa. 1972).

Seller's action to repossess caterpillar tractor; buyer cross-complained for wrongful and malicious repossession; held, evidence supported finding that unauthorized action of sheriff in aiding plaintiff in repossession amounted to constructive force, intimidation, and oppression, constituting breach of peace and conversion. Stone Mach. Co. v. Kessler, 1 Wash. App. 750, 463 P.2d 651 (1970), review denied, 77 Wash. 2d 962 (1970).

"Breach of peace" as that term is used in Ohio version of UCC § 9-503 includes acts fraught with likelihood of violence, i.e. no assault need have been committed, but there was breach of peace when citizen was "surrounded" by two men and placed in fear of "being beaten." Morris v. First Nat'l Bank & Trust Co., 21 Ohio St. 2d 25, 254 N.E.2d 683 (1970).

The words "if this can be done without breach of the peace" contemplated that the breach of peace there referred to must involve some violence, or at least the threat of violence; it was error for the trial court to charge a constructive breach of the peace where the defendants had repossessed a tractor without any violence or threat of violence. Harris Truck & Trailer Sales v. Foote, 58 Tenn. App. 710, 436 S.W.2d 460 (1968).

Employees of bank which held security agreement authorizing it in the event of a default to enter the premises where any of the collateral might be located and take and carry away the same with or without legal process, were not guilty of a "breach of the peace" when they entered the debtor's premises after default through use of a key which was unauthorizedly obtained. Cherno v. Bank of Babylon, 54 Misc. 2d 277 (1967), aff'd, 29 A.D.2d 767, 288 N.Y.S.2d 862 (2 Dep't 1968).

12. —Conversion.

In action by financer of motor-vehicle dealer to recover against dealer's statutory license bond for alleged conversion of vehicles sold by dealer, who was in default under security agreement with plaintiff, mere existence of plaintiff's right to take possession of vehicles, after dealer's default, under "self-help" repossession provisions of UCC § 9-503 was not sufficient possessory interest to sustain conversion claim where plaintiff, prior to making such claim against dealer's bond, had not attempted exercise its right to repossess vehicles. Citicorp Homeowners, Inc. v. Western Sur. Co., 131 Ariz. 334, 641 P.2d 248 (Ct. App. 1981).

Since UCC § 9-503 gives a secured party the right to immediate possession of the collateral on the debtor's default, allegations by the secured party of an immediate possessory right to the collateral, and of acts by the defendant that interfere with such right, are sufficient to state a cause of action in conversion against the defendant. Kramer v. McDonald's Sys., 61 Ill. App. 3d 947, 378 N.E.2d 522 (1st Dist. 1978), aff'd, 77 Ill. 2d 323, 33 Ill. Dec. 115, 396 N.E.2d 504 (1979).

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right of set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral-in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

In action for conversion of debtor's unencumbered personal property in trunk of car repossessed by creditor under self-help provisions of UCC § 9-503, award of actual damages from which no appeal was taken was affirmed, but award of punitive damages was disapproved where evidence did not show, either directly or circumstantially, that creditor or any of its employees had acted with wilful, deliberate, or evil intent to deprive debtor maliciously, fraudulently, or oppressively of his personal property. Mangrum v. Ford Motor Credit Co., 577 P.2d 1304 (Okla. 1978).

In buyer's suit against credit company and automobile dealer for conversion of car, where (1) buyer, after entering into retail installment contract for purchase of used car from dealer and after dealer's assignment of contract to credit company, failed to make numerous payments on time, (2) credit company never refused any of buyer's late payments, (3) credit company repossessed car when buyer was still in default, and (4) credit company, allegedly before such repossession, sent buyer letter, which buyer denied receiving, that informed buyer that in the future, credit company would insist on strict compliance with contract, court held (1) that credit company's conduct in allowing buyer to fall behind in payments without repossessing car and in consistently accepting buyer's late payments was sufficient to justify jury finding that credit company had waived its right to repossess under UCC § 9-503, (2) that credit company's letter to buyer shortly before car's repossession could not be said, as matter of law, to be defense to credit company's waiver of its right to repossess in view of buyer's testimony that he never received such letter, and (3) that because credit company's waiver of its right to repossess had resulted from its conduct and was not a voluntary relinquishment of such right, evidence did not show wanton and malicious intent of credit company to injure buyer that would justify award of punitive damages, especially since car's repossession had been accomplished under belief that credit company still had right to repossess. Ford Motor Credit Co. v. Washington, 573 S.W.2d 616 (Tex. Civ. App. 1978), writ ref'd n.r.e., (Mar. 28, 1979).

Where (1) seller sold portable building and air cooler to buyer for large down payment and small balance, which buyer allegedly failed to pay when it became due, and (2) seller repossessed the property, even though buyer and seller had not executed security agreement designating it as collateral for balance due, court held (1) that since property had been unconditionally delivered to buyer, buyer was entitled to retain possession thereof, even though he still owed part of purchase price, and (2) that allegations of seller's motion for new trial did not establish that his repossession was justified, either at common law or under the Uniform Commercial Code (see UCC § 9-503). Gardner v. Jones, 570 S.W.2d 198 (Tex. Civ. App. 1978).

Livestock auctioneer was not liable in conversion to secured creditor for selling, on behalf of debtor, cattle belonging to debtor which were part of collateral for creditor's loan where (1) debtor's security agreement with creditor did not prohibit sale of collateral or provide that such sale would constitute default by debtor on underlying obligation, and (2) debtor at time of sale was not in default on underlying obligation, so as to entitle creditor under UCC § 9-503 to immediate possession of cattle and thus give creditor basis for suit in conversion. Production Credit Ass'n v. Equity Coop Livestock Sales Ass'n, 82 Wis. 2d 5, 261 N.W.2d 127 (1978).

Where note was accompanied by security agreement which granted security interest in all property of debtor in secured party's possession as security for all obligations owed by debtor, secured party, on default on note, clearly had right under UCC § 9-503 to take possession of all property of debtor in secured party's possession, and exercise of this right did not result in conversion of such collateral by secured party, since situation did not involve applicability of UCC § 9-505(1), which provides that if debtor has paid 60 percent of loan, secured party who has taken possession of collateral consisting of consumer goods must dispose of such collateral within 90 days or face liability for conversion. Keller v. La Rissa, Inc., 60 Haw. 1, 586 P.2d 1017 (1978).

UCC § 9-503 cannot be interpreted as permitting self-help repossession of collateral by trick or fraud without knowledge of debtor. Thus, where secured party, on pretext of examining debtor's record of payments under automobile installment-purchase contract to determine whether debtor was in default, induced debtor to drive purchased vehicle to secured party's office and there repossessed vehicle while debtor was engaged in disputing alleged default, secured party was guilty of self-help repossession effected by fraud and trickery without debtor's consent, and such conduct rendered secured party liable for conversion of repossessed vehicle. Ford Motor Credit Co. v. Byrd, 351 So. 2d 557 (Ala. 1977).

Where security agreement executed by buyer of automobile provided that seller, in event of buyer's default on note given to finance vehicle, could without process take immediate possession of vehicle and any property therein and hold such property for buyer at buyer's risk without liability on part of seller, seller on effecting self-help repossession of vehicle under UCC § 9-503 could lawfully take possession of personal property of buyer inside vehicle, even though seller had no security interest in such property, but failure to return property on buyer's demand would constitute unlawful exercise of dominion over property. Hence, in conversion action for seller's alleged refusal to return such property to buyer until entire balance due on note was paid, (1) question whether property had in fact been unlawfully detained should have been determined by trial of such issue; (2) trial court's granting of summary judgment on issue in favor of seller was erroneous and would be reversed; and (3) seller's present willingness to return property to buyer did not remove tortious nature of originally unauthorized exercise of dominion over property. Jones v. GMAC, 565 P.2d 9 (Okla. 1977).

Since secured creditor had right under UCC § 9-503 to repossess collateral upon default, repossession by agent of creditor was not conversion, even though repossession was without notice, and private sale of repossessed collateral was not conversion, even though sale was not commercially reasonable as required by UCC § 9-504. Thurmond v. Elliott Fin. Co., 141 Ga. App. 574, 234 S.E.2d 153 (1977).

Where security agreement providing that creditor would have security interest in inventory of retailer and in proceeds of sale of each item of inventory did not impose duty upon retailer to pay over to creditor specific proceeds of sale of each item covered by agreement, but merely provided that upon sale or other disposition of any item of inventory, retailer was obligated to immediately pay amounts due to creditor, there was no specific fund from which payment had to be made, and thus corporate officer's commingling of proceeds of sales with other funds was not conversion of proceeds. Independence Disct. Corp. v. Bressner, 47 A.D.2d 756 (2d Dep't 1975).

In action by debtor against creditor and others to recover damages for conversion of his automobile, creditor lawfully enforced security interest in automobile under UCC § 9-503 where, although court did not expressly find that debtor was in default, it did find that creditor's "repossession" was in accordance with agreement of parties, which finding was supported by creditor's testimony, and contained implied finding that debt was overdue and that debtor was in default when creditor sold car. Clark v. Vaughn, 504 S.W.2d 550 (Tex. Civ. App. 1973), writ ref'd n.r.e., (Apr. 17, 1974).

Where secured party repossessed automobile in accord with terms of security agreement and provisions of UCC § 9-503 without use of force or fraud, debtor was not entitled under theory of unlawful conversion to retain venue of suit in county where automobile was repossessed under provisions of venue statute relating to crime or trespass. Ford Motor Credit Co. v. Cole, 503 S.W.2d 853 (Tex. Civ. App. 1973), writ dismissed w.o.j., (Apr. 3, 1974).

Secured party not liable in conversion for repossession of trucks upon buyer's default; notice of repossession not required under retail instalment contract or Code. Weaver v. O'Meara Motor Co., 452 P.2d 87 (Alaska 1969).

Where purchaser of tractor under conditional sales agreement delivered it to dealer for repairs at a time when he was in default in making monthly payments, and had previously advised assignee of contract he did not intend to make additional payments until allegedly defective machine was replaced, assignee was not guilty of conversion for instructing dealer to hold tractor in its name, or for subsequently reselling it. N.J. Scott Excavating & Wreckings, Inc. v. Rosencrantz, 107 N.H. 422, 223 A.2d 522 (1966).

13. —Trespass and other criminal or tortious actions.

Unauthorized entry onto driveway of debtor's residence by secured creditor to remove or repossess vehicle did not constitute breach of peace, despite argument that entering private driveway to repossess vehicle without use of force is breach of peace because it constitutes trespass. Butler v. Ford Motor Credit Co., 829 F.2d 568 (5th Cir. 1987).

Unless parties otherwise agree, when vehicle is covered by valid security agreement which provides that creditor has right to repossess vehicle on debtor's default, repossession of vehicle under UCC § 9-503 from debtor's unenclosed carport without threats or use of force is not trespass, regardless of whether the security agreement specifically authorizes entry on debtor's premises. Marine Midland Bank-Central v. Cote, 351 So. 2d 750 (Fla. App. 1977).

Self-help repossession of pick-up truck by secured party pursuant to terms of security agreement after debtor defaulted did not constitute trespass or wrongful conversion, notwithstanding debtor refused to deliver possession of vehicle to secured party, where debtor was not present at time of repossession and no issue of resistance or lack of resistance to repossession was raised; furthermore, self-help repossession provision of UCC § 9-503 does not violate due process clause of Fourteenth Amendment to the United States Constitution nor does it violate state constitutional provision that "No person shall be deprived of life, liberty, or property, without due process of law," since there was no state action involved. Helfinstine v. Martin, 561 P.2d 951 (Okla. 1977).

Bank and its agent were not liable to debtor for conversion based on theory that they committed "unlawful trespass" when agent repossessed debtor's automobile while it was parked in driveway of debtor's home since conditional sales agreement authorized secured party to "enter any premises where motor vehicle may be found and take possession of it," and where there was no entry into home or other closed building on debtor's premises. Raffa v. Dania Bank, 321 So. 2d 83 (Fla. App. 1975).

In trespass action against credit corporation which had purchased conditional sales contract for automobile, evidence failed to support essential element of action of trespass, that of use of force, actual or constructive, where credit company repossessed automobile covertly and without breach of peace nor intimidation of plaintiff-vendee, because, under UCC § 9-503, right to repossess personal property by secured party is statutory, absent contrary agreement. Ford Motor Credit Co. v. Ditton, 52 Ala. App. 555, 295 So. 2d 408 (1974), cert. denied, 292 Ala. 423, 295 So. 2d 412 (1974).

Where buyer of automobile failed to pay cash balance due thereon and seller repossessed automobile, seller was not guilty of grand larceny; among other things, seller's action was expressly authorized by UCC § 9-503. White v. State, 51 Ala. App. 638, 288 So. 2d 175 (Crim. App. 1974).

Under UCC § 9-503 creditor may not undertake self-help repossession which results in breach of peace and, thus, trial court erred in dismissing complaint that alleged wrongful trespass by secured party in order to repossess automobile. Thrasher v. First Nat'l Bank, 288 So. 2d 288 (Fla. App. 1974).

Bank employees, entering debtor's premises with unauthorized key and taking collateral without legal process pursuant to Code § 9-503, had not converted collateral, since they had not breached the peace; however, court did not condone this self-help where bank had knowledge of pending legal proceedings and suggested that it might subject bank to contempt charges. Cherno v. Bank of Babylon, 54 Misc. 2d 277 (1967), aff'd, 29 A.D.2d 767, 288 N.Y.S.2d 862 (2 Dep't 1968).

14. —Liability of secured party for tortious acts committed during repossession.

Once having chosen remedy of peaceable repossession, instituting party subjects itself to any liability due to negligence arising in course of enforcement, which would not be case had party chosen legal remedy of replevin whereby legal officer would be primarily liable for damages arising from his actions. Southern Indus. Sav. Bank v. Greene, 224 So. 2d 416 (Fla. App. 1969), cert. denied, 232 So. 2d 181 (Fla. 1969).

While secured party, through its agents, had right to peacefully enter premises and obtain its property, secured party would be responsible for any tortious acts committed during repossession. Whisenhunt v. Allen Parker Co., 119 Ga. App. 813, 168 S.E.2d 827 (1969).

15. —Agreements as to notice prior to repossession.

Borrower's contention that security agreement required bank to give it adequate notice of acceleration of balance due on note before repossessing collateral could not be sustained where such agreement expressly provided that on default of borrower, bank at its option could declare all of borrower's obligations to be immediately due and payable without notice or demand, and that creditor should then have remedies of secured party under Uniform Commercial Code, including right to repossess collateral under UCC § 9-503. Ace Parts & Distrib., Inc. v. First Nat'l Bank, 146 Ga. App. 4, 245 S.E.2d 314 (1978).

Where security agreement with respect to default provided (1) that seller should have right to declare all amounts due or to become due under the agreement to be immediately due and payable, and (2) that seller should also have all rights and remedies of a secured party under the Uniform Commercial Code, including right to repossess collateral, court held that seller had not contracted away its right under law (see UCC § 9-503) to repossess collateral without first giving notice to debtor. Ford Motor Credit Co. v. Hunt, 241 Ga. 342, 245 S.E.2d 295 (1978).

Where automobile lessor, without prior demand or notice, repossessed vehicle from lessee's garage for lessee's failure to make several monthly payments during lessee's ten-month possession of vehicle, and where lessor accepted some monthly payments from lessee after accrual of such arrearage, trial court erred in granting summary judgment to lessor for lessee's breach of lease agreement, since issue of fact existed as to whether lessee was entitled to notice of repossession or demand for payment of arrearage prior to repossession. Although UCC § 9-503, in allowing self-help repossession, does not impose requirement of notice or demand, creditor may nevertheless impose such requirement on himself by conduct which gives debtor impression that late payments will be accepted or that arrearage need not be paid immediately. Pierce v. Leasing Int'l, Inc., 142 Ga. App. 371, 235 S.E.2d 752 (1977), opinion after remand from supreme court, 144 Ga. App. 312, 241 S.E.2d 31 (1977).

Notwithstanding UCC § 9-503 permits self-help repossession, repossession of automobile by dealer and finance company without prior notice constituted a tort where contract contained acceleration clause which, by judicial construction, required affirmative action by dealer and finance company in notifying purchaser of their election to declare contract in default and to accelerate it to maturity. Ford Motor Credit Co. v. Milline, 137 Ga. App. 585, 224 S.E.2d 437 (1976).

16. —Right of secured party to repossession; particular applications.

In buyer's suit against credit company and automobile dealer for conversion of car, where (1) buyer, after entering into retail installment contract for purchase of used car from dealer and after dealer's assignment of contract to credit company, failed to make numerous payments on time, (2) credit company never refused any of buyer's late payments, (3) credit company repossessed car when buyer was still in default, and (4) credit company, allegedly before such repossession, sent buyer letter, which buyer denied receiving, that informed buyer that in the future, credit company would insist on strict compliance with contract, court held (1) that credit company's conduct in allowing buyer to fall behind in payments without repossessing car and in consistently accepting buyer's late payments was sufficient to justify jury finding that credit company had waived its right to repossess under UCC § 9-503, (2) that credit company's letter to buyer shortly before car's repossession could not be said, as matter of law, to be defense to credit company's waiver of its right to repossess in view of buyer's testimony that he never received such letter, and (3) that because credit company's waiver of its right to repossess had resulted from its conduct and was not a voluntary relinquishment of such right, evidence did not show wanton and malicious intent of credit company to injure buyer that would justify award of punitive damages, especially since car's repossession had been accomplished under belief that credit company still had right to repossess. Ford Motor Credit Co. v. Washington, 573 S.W.2d 616 (Tex. Civ. App. 1978), writ ref'd n.r.e., (Mar. 28, 1979).

Under UCC § 9-503, the secured party does not have to secure the debtor's permission in order to take possession of the collateral without judicial process. Furthermore, removal from the premises of collateral that consists of heavy equipment is not required, since under UCC § 9-503, the secured party may render such equipment unusable or dispose of it. Elliot v. Villa Park Trust & Sav. Bank, 63 Ill. App. 3d 714, 380 N.E.2d 507 (Dist. 1978).

Repossession of automobile was not wrongful under UCC § 9-503, which permits secured party to take possession of collateral on debtor's default, where (1) retail installment contract between buyer and seller provided that time was of the essence of the contract, that in event of buyer's default, seller had right to declare all amounts due or to become due to be immediately due and payable, that seller had right under Uniform Commercial Code to repossess vehicle, and that seller's waiver of any default should not be deemed to be a waiver of any other default, and (2) at time of seller's repossession of vehicle, buyer was in default on an installment payment. Moreover, the mere fact, if true, that several hours before repossession took place, buyer, without knowledge of or notice to seller, sent seller check by certified mail did not constitute payment of delinquent installment, since check was not received until after seller had repossessed vehicle. Wade v. Ford Motor Credit Co., 455 F. Supp. 147 (E.D. Mo. 1978).

Where evidence in conversion action showed that plaintiff purchased motorcycle under instalment contract giving seller security interest in vehicle; that seller assigned contract for value and with full recourse to bank, which filed contract of record on July 31, 1972; that purchaser defaulted in making payments in October, 1973; that seller paid balance due on vehicle to bank and bank orally reassigned contract to seller on April 4, 1974; that seller then paid third party's bill for repairs to vehicle and repossessed vehicle from such party; and that purchaser instituted action against seller after failing to repay seller for amounts paid out on vehicle, (1) seller on buying contract back from bank became secured party entitled to self-help repossession under UCC § 9-503; (2) seller did not convert vehicle by paying repair bill and repossessing vehicle, since such action was authorized by debtor-redemption provisions of UCC § 9-506; and (3) conversion claim based on seller's alleged violation of UCC § 9-505 also failed because it was not made until final argument at trial. Eustice v. Brazille, 567 P.2d 92 (Okla. 1977).

Where (1) Navajo Indian purchased pick-up truck from Arizona seller whose place of business was located outside boundaries of Navajo Reservation, (2) purchase price of truck was financed by installment-sale security agreement which provided that validity and construction of agreement would be governed by Arizona law and that secured party should have all rights and remedies for default provided by Arizona Uniform Commercial Code, and (3) seller, on buyer's default in making payments, effected self-help repossession of truck pursuant to UCC § 9-503 within boundaries of Navajo Reservation and without breach of the peace, under UCC § 1-105(1) parties by their contractual choice of Arizona law to govern transaction excluded any possibility that transaction would be affected by provisions of Navajo Tribal Code which prescribed civil penalty for repossessing personal property of Navajo Indians on land subject to jurisdiction of Navajo Tribe where such repossession was not effected with written consent of purchaser at time of repossession. Brown v. Babbitt Ford, Inc., 117 Ariz. 192, 571 P.2d 689 (Ct. App. 1977).

In action to recover on delinquent promissory note which was secured by security interest in personal property, secured creditor was entitled under UCC § 9-503 to possession of the property and could have properly obtained possession if it could have done so without breaching the peace. Bank of Pleasant Grove v. Johnson, 552 P.2d 1276 (Utah 1976).

In action against finance company for conversion and invasion of privacy, arising out of repossession of debtor's automobile, trial court did not err in instructing jury that repossession was not wrongful where debtor admitted she was one payment behind at time automobile was repossessed. Windsor v. GMAC, 295 Ala. 80, 323 So. 2d 350 (1975).

Secured parties who repossessed collateral, restaurant equipment, by breaking lock on door of drive-in were within their rights under UCC § 9-503 where collateral was kept in premises leased from secured parties, rent had been in default for one month, demand for payment of rent had been made in that month, debtors had been given notice that lease was terminated according to its terms, lease provided that upon breach lessors would have right to reenter and take possession of premises without judicial proceedings, and there could be no breach of peace by party forcibly entering premises to which he is entitled to possession. Wirth v. Heavey, 508 S.W.2d 263 (Mo. Ct. App. 1974).

Where the chattel mortgage on an airplane provided that, in event of default, the mortgagee or his assignee may exercise the option of entering upon the premises where the plane is located without notice and remove the same, an assignee of the mortgagee did not unlawfully convert the chattel by going upon the premises of one who had purchased it with constructive notice of the mortgage and taking possession of and removing the plane, making no effort at concealment and under circumstances in which no breach of the peace was likely to occur. Kroeger v. Ogsden, 429 P.2d 781 (Okla. 1967).

Where the finance company takes the collateral car from the possession of the debtor's sister-in-law with the statement that the company was going to keep the car there is an accord and satisfaction which terminates any liability of the debtor so that he is not liable for a deficiency resulting on resale. Moody v. Nides Fin. Co., 115 Ga. App. 859, 156 S.E.2d 310 (1967).

Where franchise contract provided that piano manufacturer retained title to all goods shipped to dealer and that it could demand return of its property at any time, manufacturer was fully within its rights in repossessing its goods without assistance of formal legal process where there was no danger of a breach of the peace. Parks v. Baldwin Piano & Organ Co., 262 F. Supp. 515 (D. Conn. 1967), aff'd, 386 F.2d 828 (2d Cir. Conn. 1967).

17. Repossession by action, generally.

Mere defect in replevin procedure by which secured creditor repossesses secured property is not ground upon which debtor, who fails to show substantive defense to repossession, may have default order for replevin set aside. Dungan v. Dick Moore, Inc., 463 So. 2d 1094 (Miss. 1985).

The words, "by action", in this section refer to some procedural process provided by the state, exclusive of the Code, whereby a person entitled to property may recover, such as an action for replevin, and there is no special procedure spelled out in the New York Code for recovery by a secured party of his collateral upon default by the debtor. In re Yale Express Sys., 370 F.2d 433 (2d Cir. N.Y. 1966).

18. —Particular applications.

It is apparent from UCC § 9-503 that a secured party within UCC § 9-105(1) is permitted to proceed with statutorily recognized replevin action when debtor is in default under security agreement. GECC v. Fred Pistone, Jr., Inc., 68 Misc. 2d 475 (1971).

19. —Particular applications; after bankruptcy of debtor.

When a plan has been filed under Chapter XIII in bankruptcy, a creditor cannot exercise the right of self-help to regain possession of the collateral but must file a reclamation petition in the bankruptcy proceedings. First Nat'l Bank v. Cope, 385 F.2d 404 (1st Cir. Me. 1967).

Since the UCC has abolished the technical distinctions between the various security devices, the federal bankruptcy courts should no longer feel compelled to engage in the purely theoretical exercise of locating "title"; nor should considerations of where "title lies" influence the courts in the exercise of their equitable discretion in ruling upon a security holder's petition for reclamation of collateral. In re Yale Express Sys., 370 F.2d 433 (2d Cir. N.Y. 1966).

20. Obligation to assemble collateral or make it available.

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right of set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral-in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

Federal court had jurisdiction to grant mandatory injunction directing debtor to assemble collateral and make it available to creditor where state law authorized and security agreement required debtor on default to assemble and make available property to creditor and where property was located in several states. Clark Equip. Co. v. Armstrong Equip. Co., 431 F.2d 54 (5th Cir. Ala. 1970), reh'g denied, 434 F.2d 1039 (5th Cir. Ala. 1970), cert. denied, 402 U.S. 909, 91 S. Ct. 1382, 28 L. Ed. 2d 650 (1971).

21. Time and place of repossession.

Repossession of automobile was not wrongful under UCC § 9-503, which permits secured party to take possession of collateral on debtor's default, where (1) retail installment contract between buyer and seller provided that time was of the essence of the contract, that in event of buyer's default, seller had right to declare all amounts due or to become due to be immediately due and payable, that seller had right under Uniform Commercial Code to repossess vehicle, and that seller's waiver of any default should not be deemed to be a waiver of any other default, and (2) at time of seller's repossession of vehicle, buyer was in default on an installment payment. Moreover, the mere fact, if true, that several hours before repossession took place, buyer, without knowledge of or notice to seller, sent seller check by certified mail did not constitute payment of delinquent installment, since check was not received until after seller had repossessed vehicle. Wade v. Ford Motor Credit Co., 455 F. Supp. 147 (E.D. Mo. 1978).

Under UCC § 9-503, the secured party does not have to secure the debtor's permission in order to take possession of the collateral without judicial process. Furthermore, removal from the premises of collateral that consists of heavy equipment is not required, since under UCC § 9-503, the secured party may render such equipment unusable or dispose of it. Elliot v. Villa Park Trust & Sav. Bank, 63 Ill. App. 3d 714, 380 N.E.2d 507 (Dist. 1978).

On default, secured party under UCC § 9-503 has right to take possession of collateral, unless parties have otherwise agreed, but such right does not impose obligation on secured party to take possession on debtor's demand. North Carolina Nat'l Bank v. Sharpe, 35 N.C. App. 404, 241 S.E.2d 360 (1978).

A security holder's right to possession of the collateral accrues immediately upon default of the security agreement, and hence where road-building equipment was in a certain county at the time of default, the right to possession accrued while the equipment was in that county; however, since nothing in the record showed that the removal of the equipment to another county contravened the security holder's right to possession, its cause of action in replevin accrued only after its demand for possession of the equipment was refused, when the equipment had been taken to the second county, and consequently its cause of action arose in the second county. County Constr. Co. v. Livengood Constr. Corp., 393 Pa. 39, 142 A.2d 9 (1958).

22. Resale of collateral by secured party.

Where bank agreed to advance funds for floor-plan financing of new and used cars to be sold by debtor, where bank repossessed debtor's automobile stock after default pursuant to UCC § 9-503 and where debtor signed default agreement nine days after repossession which waived all notice of terms, times, and places of sale of repossessed automobiles, waiver of notification of sale of collateral following default was valid under UCC § 9-501(3). Teeter Motor Co. v. First Nat'l Bank, 260 Ark. 764, 543 S.W.2d 938 (1976).

Secured party was not entitled to recover deficiency judgment from cosigner of note where collateral securing note was repossessed and sold without notice to cosigner. First State Bank v. Northrop, 519 S.W.2d 161 (Tex. Civ. App. 1975).

Bank dealt with collateral securing promissory note in commercially reasonable manner, where, after defendant had paid only five monthly installments on note, bank sent notice, which met requirements of UCC § 9-504(3), to defendant by registered mail stating that collateral would be sold at public sale, and thereafter proceeded with commercially reasonable public sale. Bank of Josephine v. Hopson, 516 S.W.2d 339 (Ky. 1974).

In the absence of evidence that following the repossession of a truck under a defaulted sales contract the collateral was sold and that a deficiency resulted, the security holder has no claim against the conditional purchaser. Cox Motor Car Co. v. Castle, 402 S.W.2d 429 (Ky. 1966).

Effect of failure to sell repossessed collateral. A security holder who has repossessed a truck under a defaulted conditional sales contract is required to liquidate it at reasonable public sale as a condition of seeking further recovery from the conditional purchaser; and the conditional purchaser's obligation is limited to whatever deficiency remains after such a sale. Cox Motor Car Co. v. Castle, 402 S.W.2d 429 (Ky. 1966).

In a case where it was determined that indorsers upon a note given by a conditional buyer to a conditional seller were not discharged by the fact that the seller, after default, repossessed and resold the property, it was said that §§ 9-503 and 9-504 permitted such repossession and subsequent sale. Priggen Steel Bldgs. Co. v. Parsons, 350 Mass. 62, 213 N.E.2d 252 (1966).

23. Sale of collateral by debtor or third party.

Where (1) debtor, which owned chain of stores, obtained loan from defendant bank and gave bank security interest in inventory in one of debtor's stores, which interest bank perfected, (2) debtor subsequently sold two stores to plaintiff for $14,000, of which approximately $8,000 was attributable to sale of store in which bank had security interest in store's inventory, (3) plaintiff opened account with bank in name of store in which bank had security interest in store's inventory, and bank dishonored check written on such account, even though it had sufficient funds to cover check, because bank had applied all funds in account to overdue obligation of debtor-seller of such store, (4) plaintiff sued bank for amount withdrawn from plaintiff's account, and (5) bank filed counterclaim for plaintiff's alleged conversion of part of store's inventory, court held (1) that bank, under security agreement with debtor-seller of store, did not have right to apply money deposited by plaintiff with bank, which represented funds received from sale of store's inventory in which bank had security interest, to satisfaction of debt owed to bank, (2) that although debtor's transfer of inventory to plaintiff was not effective against bank under UCC Article 6, dealing with bulk transfers, such fact did not render plaintiff personally liable to bank under UCC § 6-106(1) (which makes transferee of bulk sale liable for debts of transferor), since Alabama had not adopted UCC § 6-106, (3) that although plaintiff had attempted to comply with UCC § 6-104(1)(a) by requiring debtor to furnish plaintiff with list of debtor's existing creditors, debtor had failed to include bank on such list, (4) that since no debtor-creditor relationship existed between plaintiff and bank with respect to debt owed bank, bank had no right of set-off against funds in plaintiff's account, (5) that debtor's noncompliance with bulk transfer act merely made transfer to plaintiff ineffective as to bank, which retained its position as secured creditor, (6) that although under UCC § 9-201, a security agreement is effective against purchasers of collateral-in context of protecting secured party's interest by allowing repossession of collateral or action for its conversion-the terms of the security agreement, such as applying funds, are effective only between parties to the agreement and not against purchasers of collateral, (7) that term "proceeds" in UCC § 9-306(2), as applied to facts of present case, referred to $8,000 received by debtor on sale of store's inventory to plaintiff and not to money received by plaintiff on its retail resale of such inventory, (8) that bank thus had no right to withdraw funds in plaintiff's account and apply them to debtor's obligation, (9) that debtor's bulk inventory sale to plaintiff was unauthorized disposition of the collateral under debtor's security agreement with bank, and (10) that since debtor, at time of such sale, was in default on its obligation to bank, bank had right under UCC § 9-503 to take possession of the collateral (inventory) and thus could maintain action of conversion against plaintiff for plaintiff's resale of collateral. Get It Kwik of Am., Inc. v. First Ala. Bank, 361 So. 2d 568 (Ala. Civ. App. 1978).

When debtor is in default under security agreement, secured party has rights and remedies that agreement provides for. Thus, on default, creditor under UCC § 9-501(1) may reduce his claim to judgment, foreclose, or otherwise enforce his security interest by any available judicial procedure. In addition, unless otherwise agreed, secured party on default has right under UCC § 9-503 to take possession of collateral. Accordingly, where debtor, whose payments on indebtedness were up-to-date, was in default because he had sold collateral covered by security agreement to third person without informing secured party or obtaining his consent, secured party could recover property in claim and delivery action, since neither UCC § 9-501(1) nor UCC § 9-503 makes an exception for technical defaults that do not cause financial injury to secured party. Gorham v. Denha, 77 Mich. App. 264, 258 N.W.2d 196 (1977).

Where mortgagee is given right to take possession upon removal or sale of collateral, removal or sale by third person constitutes conversion for which mortgagee may sue third person. Farmers State Bank v. Stewart, 454 S.W.2d 908 (Mo. 1970).

24. Priorities among creditors.

Where guarantor of note and security agreement made partial payment on note, guarantor became subrogated to rights of secured party and was, thus, entitled to repossess collateral under UCC § 9-503 upon debtor's default. Benschoter v. First Nat'l Bank, 218 Kan. 144, 542 P.2d 1042 (1975), appeal dismissed, 425 U.S. 928, 96 S. Ct. 1656, 48 L. Ed. 2d 170 (1976).

Where defendant agreed to pay for equipment, pump company agreed to furnish equipment, and tenant agreed that defendant would have interest in equipment, defendant had purchase money security interest in equipment and was entitled to prevail over landlord's rights under lease; held, where there were unquestionable defaults in payment by tenant, defendant could remove equipment so long as he did not convert any property of landlord in so doing. Honea v. Laco Auto Leasing, Inc., 80 N.M. 300, 454 P.2d 782 (Ct. App. 1969).

RESEARCH REFERENCES

ALR. Rights and remedies as between parties to conditional sale after seller has repossessed himself of the property. 49 A.L.R.2d 15.

Relative rights as between assignee of conditional seller and a subsequent buyer from the conditional seller after repossession or the like. 72 A.L.R.2d 342.

Punitive or exemplary damages for wrongful possession or repossession by holder of chattel mortgage or conditional sales contract. 35 A.L.R.3d 1016.

Validity, under state law, of self-help repossession of goods pursuant to UCC § 9-503. 75 A.L.R.3d 1061.

Secured transactions: right of secured party to take possession of collateral on default under UCC 9-503. 25 A.L.R.5th 696.

Validity, under Federal Constitution and laws, of self-help repossession provision of § 9-503 of Uniform Commercial Code. 29 A.L.R. Fed. 418.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 501 et seq.

Default; Taking possession of collateral, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:731-9:737.

Secured party's right to take possession after default, 19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3751 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

The recent erosion of the secured creditor's rights through cases, rules and statutory changes in bankruptcy law, 53 Miss. L. J. 389, September, 1983.

§ 75-9-610. Disposition of collateral after default.

(a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment or the like in this disposition" or uses words of similar import.

SOURCES: Derived from former 1972 Code § 75-9-504 [Codes, 1942, § 41A:9-504; Laws, 1966, ch. 316, § 9-504; Laws, 1970, ch. 272, § 1; Laws, 1977, ch. 452, § 34, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Obligation of good faith, see § 75-1-203.
Seller's resale of goods following buyer's rejection, see § 75-2-706.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-504(1), (3).

A. In General.

6. Generally.
7. Constitutional issues.
8. Relationship with other laws.
9. Security devices.
10. Priority as to right to proceed.
11. Retention of collateral in satisfaction of debt.

B. Commercial Reasonableness.

12. In general.
13. Criteria of reasonableness.
14. —Method and manner; reasonable.
15. —Method and manner; not reasonable.
16. —Time.
17. —Place.
18. —Terms.
19. —Terms; condition of collateral.
20. —Terms; price adequate.
21. —Terms; price inadequate.
22. Purchase by creditor; public sale.
23. —Private sale.
24. Debtor's remedies.
25. Burden of proof.

C. Notice.

26. In general; scope.
27. Timeliness.
28. Manner of method.
29. —Mailing.
30. —Mailing; undelivered or unclaimed.
31. Form.
32. Sufficiency.
33. —Public sale.
34. —Private sale.
35. —Actual notice.
36. —Constructive notice.
37. Parties entitled to notice.
38. —Accommodation parties.
39. —Guarantor.
40. —Owner of collateral.
41. —Waiver.
42. Exceptions to notice requirement.
43. —Sale on recognized market.
44. —"Recognized market".
45. Evidence of burden of proof.

D. Application of Proceeds.

46. In general; creditor's expenses and attorney's fees.
47. Secured debt.
48. —Damages for loss of use.
49. —Interest.
50. Subordinate interests.
51. Surplus.

E. Deficiencies.

52. In general; scope.
53. Agreements of parties.
54. Commercial reasonableness.
55. —Notice defects; deficiency judgment denied.
56. —Notice defects; deficiency judgment granted.
57. —Price.
58. Evidence and burden of proof.

F. Purchases for Value.

59. In general.

G. Transfers of Collateral.

60. In general.

H. Practice and Procedure.

61. In general.
62. Limitation of actions.
63. Pleadings.
64. —Defenses.
65. Jury issues.

I. Decisions Under Former Statutes.

67. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-504(1), (3).

A. In General.

6. Generally.

In creditor's action again trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

Mobile home is not collateral that threatens to decline speedily in value within meaning of UCC § 9-504(3). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Where the security instrument and its terms were not introduced in evidence, the trial court could not determine whether a default had occurred which would entitle the security holder to sell or otherwise dispose of the collateral. Borochoff Properties, Inc. v. Howard Lumber Co., 115 Ga. App. 691, 155 S.E.2d 651 (1967).

In a case where it was determined that indorsers upon a note given by a conditional buyer to a conditional seller were not discharged by the fact that the seller, after default, repossessed and resold the property, it was said that §§ 9-503, and 9-504 permitted such repossession and subsequent sale. Priggen Steel Bldgs. Co. v. Parsons, 350 Mass. 62, 213 N.E.2d 252 (1966).

The secret disposition of the collateral by chattel mortgage owners and others was one of the evils the Uniform Commercial Code sought to correct. Skeels v. Universal C.I.T. Credit Corp., 222 F. Supp. 696 (W.D. Pa. 1963), vacated on other grounds, 335 F.2d 846 (3d Cir. Pa. 1964).

A sale by the creditor must be conducted in accordance with the article on sales. Drew v. John Deere Co. of Syracuse, Inc., 19 A.D.2d 308 (4th Dep't 1963).

7. Constitutional issues.

Fact that Arizona's enactment of UCC §§ 9-503 and 9-504 greatly changed Arizona law, rather than merely codifying a preexisting common-law right, did not, in absence of further indications of government involvement, establish state action in violation of debtor's right under Fourteenth Amendment to procedural due process, so as to give debtor, whose collateral was sold by creditor at foreclosure sale, right of action under 42 USCS § 1983. Bosse v. Crowell, Collier & MacMillan, 565 F.2d 602 (9th Cir. Ariz. 1977).

Where contract contains default and repossession provisions, private repossession is not infused with "state action" merely because state enacts §§ 9-503 and 9-504 of UCC. Gibbs v. Titelman, 502 F.2d 1107, 29 A.L.R. Fed. 406 (3d Cir. Pa. 1974), cert. denied, 419 U.S. 1039, 95 S. Ct. 526, 42 L. Ed. 2d 316 (1974).

Self-help repossession under UCC §§ 9-503 and 9-504 does not constitute sufficient state involvement to invoke jurisdiction of federal courts. Nowlin v. Professional Auto Sales, Inc., 496 F.2d 16 (8th Cir. Mo. 1974), cert. denied, 419 U.S. 1006, 95 S. Ct. 328, 42 L. Ed. 2d 283 (1974).

The prejudgment self-help repossession of secured property, as provided for in security agreements between creditors and debtors is authorized under sections of the California Commercial Code and do not involve sufficient state action to establish a federal cause of action. Adams v. Southern Cal. First Nat'l Bank, 492 F.2d 324 (9th Cir. Cal. 1973), cert. denied, 419 U.S. 1006, 95 S. Ct. 325, 42 L. Ed. 2d 282 (1974).

Repossession and sale of collateral by secured party under UCC §§ 9-503 and 9-504 without giving debtor notice and hearing did not constitute state action and, hence, could not form basis for relief under Federal Civil Rights Act. Teitelbaum v. Scranton Nat'l Bank, 384 F. Supp. 1139, 34 A.L.R. Fed. 535 (M.D. Pa. 1974).

The self-help repossession statutes do not constitute sufficient state action to confer federal jurisdiction over action seeking declaration of unconstitutionality. Thompson v. Keesee, 375 F. Supp. 195 (E.D. Ky. 1974).

Enactment of UCC §§ 9-503 and 9-504, providing for self-help repossession of mortgaged vehicle, did not constitute "state action" for purpose of determining constitutionality of procedure; nor did repossession of vehicle deprive buyer of any right of possession or ownership where buyer had voluntarily abandoned those rights by returning vehicle and rejecting it for alleged defect under UCC § 2-602. Mayhugh v. Bill Allen Chevrolet, 371 F. Supp. 1 (W.D. Mo. 1973), aff'd, 496 F.2d 16 (8th Cir. Mo. 1974), cert. denied, 419 U.S. 1006, 95 S. Ct. 328, 42 L. Ed. 2d 283 (1974).

Bank's repossession of automobile under conditional sales contract on debtor's failure to make required payment did not constitute action by state depriving debtor of property without due process of law in violation of Fourteenth Amendment. Though UCC § 9-503 recognizes right of self-help repossession of collateral, state personnel are not involved in act, and right of repossession is not creature of statute, but existed at common law. Moreover, right to deficiency judgment set forth in UCC § 9-504 is distinct from process of seizure, and its allowance does not affect nature of repossession procedure as one continuing from common law. Kipp v. Cozens, 40 Cal. App. 3d 709 (1st Dist. 1974).

State, by adopting UCC §§ 9-503 and 9-504, could not be held responsible for creating conditions which resulted in standardized contracts that are typically used in credit industry and provide for self-help repossession without notice or hearing prior to seizure; hence defendants' self-help repossession and sale of plaintiff's furniture, household goods and automobile pursuant to terms of agreement making said terms security for repayment of loan, as authorized by UCC, were not actions "under color of state law" sufficient to give federal court-jurisdiction under Civil Rights Act. Johnson v. Associates Fin., Inc., 365 F. Supp. 1380 (S.D. Ill. 1973).

Self-help repossession by creditor does not constitute state action for purposes of invoking due process clause of Fourteenth Amendment, and UCC § 9-503, which authorizes secured party to take possession of collateral after default, but only if it can be attained peacefully without breach of peace, when considered in connection with UCC §§ 9-504 through 9-507, which contain provisions designed to insure that creditor cannot exercise his contract rights in manner which enables him to profit from buyer's default, are not an unconstitutional deprivation of property without due process of law in violation of Fourteenth Amendment. Northside Motors, Inc. v. Brinkley, 282 So. 2d 617 (Fla. 1973).

Self-help repossession authorized by UCC §§ 9-503 and 9-504 did not violate Fourteenth Amendment, where repossession did not constitute state action, self-help provisions were sufficiently fair to all parties, and purchasers agreed to remedy of repossession in contract which was one consideration for contract to finance purchase. Cook v. Lilly, 158 W. Va. 99, 208 S.E.2d 784 (1974).

8. Relationship with other laws.

Failure of creditor to give notice to co-obligor who was debtor under terms of statute violated statute, since co-obligors were entitled to notice of sale of collateral, and failure to give required statutory notice shifted burden to creditor to establish that sale of collateral conformed with reasonable commercial practices and creditor also assumed burden of proving that sum received for property represents fair market value. United States v. Bryant, 628 F. Supp. 1444 (N.D. Miss. 1986).

In an action for a deficiency judgment on a secured note, in which the maker of the note claimed a setoff for profits earned by guarantors of the note while the collateral was in their possession and used by them prior to the sale, the trial court erred in refusing to allow the jury to consider evidence of profits earned by the guarantors through their use of the collateral, since, once they had paid the note and received the collateral securing it, they were subject to all the rights and obligations of the creditor with regard to disposition of the collateral, pursuant to § 75-9-504(5) [now 75-9-618], and since § 75-9-207(2)(c) [now 75-9-207(c)] obligated them to apply any net profits received from their possession of the collateral to reduce the secured obligation. Murray v. Payne, 437 So. 2d 47, 45 A.L.R.4th 379 (Miss. 1983).

Creditor's notice of public sale of collateral was sufficient under UCC § 9-504(3) to inform reasonable business persons of place of sale where (1) such notice was sent to debtor's office in Dallas, Texas; (2) creditor's attorney, who signed notice, gave Houston, Texas address and phone number; (3) address of place of sale was given as "11601 North Houston-Rosslyn Road," although name of city (Houston) in which sale was to take place was not given; (4) name of owner of property to be sold was listed on notice as "Compression, Inc. of Houston, Texas"; and with owner of place in Houston, Texas where sale was conducted and thus had not been misled by failure of notice to state that place of sale was located in Houston, (5) that property had been brought to Houston, where demand for it was greatest, (6) that creditor had obtained property for $100,000 and had later resold it for the same price, (7) that property's subsequent purchaser had refabricated it at some expense and ultimately had obtained only $140,000 for it, (8) that demand at time of sale for that type of property was not great, and (9) that property's fair-market value ($150,000) did not render its sale price ($100,000) grossly inadequate. Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4 (Tex. Civ. App. 1978), ref. n.r.e (Dec. 6, 1978).

In action by United States to recover on guaranty agreement executed by defendant to secure Small Business Administration loan made to corporation that subsequently defaulted on such loan, (1) where corporation's note for amount of loan, which was secured by three security agreements covering corporation's equipment, inventory, accounts, and rights under contracts entered into with customers, provided that holder of note could dispose of all or part of such collateral at public or private sale and that note was enforceable under applicable federal law; (2) where defendant's guaranty agreement provided that collateral could similarly be disposed of at public or private sale, subject to provisions of any existing agreement between corporation and lender and subject also to any provisions of law governing collateral's disposition, but failed to state whether guaranty was enforceable under federal or state law; and (3) where security agreements executed by corporation to lender, which were entered into at same time as note and guaranty, provided that Texas Uniform Commercial Code governed such transaction, Texas Uniform Commercial Code applied as federal law of decision and under UCC § 9-504(3), which Texas had adopted, disposition of collateral by Small Business Administration was required to be made in commercially reasonable manner. United States v. Terrey, 554 F.2d 685 (5th Cir. Tex. 1977).

Provision of motor vehicle retail installment sales act requiring, under certain circumstances, election between alternative remedies was in conflict with cumulative remedies provided in UCC §§ 9-503 and 9-504, and therefore, pursuant to UCC § 9-203(4), which provides that where there is any conflict between provisions of Article 9 of Uniform Commercial Code and provisions of motor vehicle retail installment sales act, provisions of latter statute shall apply, creditor with security interest in automobile was limited to election required by such statute where conditions precedent to applicability of statute had been met. Chicago City Bank & Trust Co. v. Anderson, 26 Ill. App. 3d 421, 325 N.E.2d 701 (1st Dist. 1975).

9. Security devices.

In lessor's suit for damages for lessee's default under personal property leasing agreement, where it was not established as matter of law that lease instrument created security interest in leased property or was anything other than a straight lease, rather than a memorandum showing a secured transaction, UCC § 9-504 and § 9-505, dealing with secured party's disposition of collateral, were inapplicable. Robinson v. Granite Equip. Leasing Corp., 553 S.W.2d 633 (Tex. Civ. App. 1977), ref. n.r.e (Oct. 5, 1977).

It does not matter whether the security agreement is in the form of a chattel mortgage or a conditional sales contract since the enactment of the UCC; for in either case the secured party has the right upon default to take possession of the collateral and to sell, lease or otherwise dispose of it, applying the proceeds to the indebtedness. In re Yale Express Sys., 370 F.2d 433 (2d Cir. N.Y. 1966).

10. Priority as to right to proceed.

Under UCC § 9-504(5), guarantor of debtor's note, as subrogee to rights of secured party, was successor to all of secured party's rights against debtor, including security interest in debtor's equipment. Manufacturers & Traders Trust Co. v. Goldman, 578 F.2d 904 (2d Cir. N.Y. 1978).

A secured party may recover possession of collateral from a judicial officer who has taken possession of it under execution. State v. Weber, 76 N.M. 636, 417 P.2d 444 (1966).

11. Retention of collateral in satisfaction of debt.

Under UCC Article 9, secured party has two relevant options after repossessing goods of defaulting debtor. Under UCC § 9-505(2), secured party can retain collateral in satisfaction of debtor's obligation. Alternatively, under UCC § 9-504(1), secured party can sell repossessed goods, apply sale price to indebtedness, and look to debtor for any deficiency. However, UCC § 9-504(3) requires that any sale under that section must be commercially reasonable. National Equip. Rental, Ltd. v. Priority Elecs. Corp., 435 F. Supp. 236 (E.D.N.Y. 1977).

In order for a secured party to retain the collateral in satisfaction of the indebtedness, the requirements of UCC § 9-505(2) must be followed. Under this section, a secured party who proposes to retain the collateral must first notify the debtor and other secured parties of the plan. And if a person entitled to notice objects, the sale provisions of UCC § 9-504 then become applicable. Jackson v. Star Sprinkler Corp., 575 F.2d 1223 (8th Cir. Mo. 1978).

B. Commercial Reasonableness.

12. In general.

Mobile home is not collateral that threatens to decline speedily in value within meaning of UCC § 9-504(3). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

UCC § 9-504(3), which provides that every aspect of disposition of collateral must be commercially reasonable and that reasonable notification of such disposition must be sent to debtor, cannot be waived, as is expressly declared by UCC 9-501(3)(b). Savings Bank v. Booze, 34 Conn. Supp. 632, 382 A.2d 226 (1977).

UCC § 9-504 permits secured party after default to both sell or lease collateral in any commercially reasonable manner and does not limit damages to legal rate of interest only. Affiliated Food Stores, Inc. v. Bank of N.E. Ark., 259 Ark. 690, 536 S.W.2d 693 (1976).

UCC § 9-504 regulating sale of repossessed collateral does not require public sale on notice, but only that sale be "commercially reasonable". Stanchi v. Kemp, 48 A.D.2d 973 (3d Dep't 1975).

Where properly seized by creditor to protect its security interest was not sold or disposed of in a commercially reasonable manner, and the record did not disclose an adequate account of the sale and disposition of the property, a new trial will be ordered. Fort Knox Nat'l Bank v. Gustafson, 385 S.W.2d 196 (Ky. 1964).

13. Criteria of reasonableness.

A trial court erred in holding that the sale of a repossessed vehicle at a dealers-only auction was "per se" commercially unreasonable; whether such a sale is commercially reasonable is a question for the finder of fact in a particular case, since the disposition of repossessed property at a dealer-only wholesale auction may be commercially reasonable when the factors of manner, method, time, place and terms of sale are considered. Ford Motor Credit Co. v. Mathis, 660 So. 2d 1273 (Miss. 1995).

The standard of commercial reasonability is predicated on two concepts that are prevalent throughout the Uniform Commercial Code. First, all commercial transactions must be conducted in good faith. Second, commercial matters, if it is at all possible, should be resolved by the means that are normally employed to handle such matters in the particular business, so long as such means deal fairly with all parties. Generally, a secured party acts in a commercially reasonable manner if, when disposing of repossessed security, he acts in good faith and in accordance with commonly accepted commercial practices that afford fair treatment to all parties. Wilkerson Motor Co. v. Johnson, 580 P.2d 505 (Okla. 1978).

Primary focus of commercial reasonableness of sale of collateral under UCC § 9-504(3) is not proceeds received from sale, but procedures employed for sale. If secured creditor makes certain that conditions of sale, with respect to aggregate effect of manner, time, place, and terms employed, conform to commercially accepted standards, he should be shielded from sanctions contained in Article 9. Mount Vernon Dodge, Inc. v. Seattle-First Nat'l Bank, 18 Wash. App. 569, 570 P.2d 702 (1977).

Sale of collateral, which consisted of vehicles and equipment in automobile dealer's inventory and dealer's accounts receivable, was conducted in commercially reasonable manner under UCC § 9-504(3) where (1) debtor was given reasonable notification of time, place, and terms of sale of inventory; (2) creditor attempted to make certain that all conditions of sale were in conformity with commercially accepted standards; (3) creditor attempted to obtain best possible price for every vehicle sold by reviewing all bids therefor to determine their reasonableness; and (4) creditor rejected all unreasonable bids for vehicles and later sold such vehicles for a higher price. Mount Vernon Dodge, Inc. v. Seattle-First Nat'l Bank, 18 Wash. App. 569, 570 P.2d 702 (1977).

Under UCC § 9-504(3), whenever disposition of collateral is to be made by public or private sale, secured party must give reasonable notice of time of sale to debtor, and every aspect of the disposition, including method, manner, time, place, and terms, must be commercially reasonable. American Lease Plans, Inc. v. Cardin, 558 S.W.2d 325 (Mo. Ct. App. 1977).

Factors to be considered in determining whether sale of collateral was commercially reasonable under UCC § 9-504(3) include (1) price received at sale by secured party, (2) price received by buyer of collateral in subsequent sale, (3) whether collateral was sold on retail or wholesale market, (4) number of bids received, especially at private sale, and (5) time and place of sale, especially public sale, with regard to securing attendance of satisfactory number of bidders. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

Foreclosure sale of stock in small, closely-held corporation, which stock had been pledged to secure loan to debtors, was conducted in commercially reasonable manner as required by UCC § 9-504(3) where due notice was published and also given to debtors, public auction conducted by secured party's attorney took place on noticed date, secured party made best and only offer in amount of stock's book value, and amount bid was fair since stock represented only minority interest in corporation; fact that sale took place in one city, although business of corporation was located in another city, did not make sale unreasonable considering that debtors' note was pledged in first city and corporate headquarters of secured party was also in first city. Nola v. Merollis Chevrolet Ky. City, Inc., 537 S.W.2d 627 (Mo. Ct. App. 1976).

In action by secured party to recover deficiency judgment after repossession and sale of collateral, secured party must allege and, unless admitted, prove that sale was commercially reasonable as required by UCC § 9-504(3); relevant factors in determining commercial reasonableness include amount of advertising done, normal commercial practices in disposing of particular collateral, length of time elapsing between repossession and resale, whether deterioration of collateral has occurred, number of persons contacted concerning sale and price obtained. Clark Leasing Corp. v. White Sands Forest Prods., Inc., 87 N.M. 451, 535 P.2d 1077, 10 A.L.R.4th 404 (1975).

14. —Method and manner; reasonable.

In action against guarantor to recover balance due on loan, where guarantor, instead of making good on its guaranty, advised creditor to dispose of collateral over extended period of time through liquidator specially recommended by guarantor, but creditor sold collateral at public auction and net proceeds of sale were insufficient to pay off balance due on loan, guarantor could not successfully contend that because of creditor's failure to follow guarantor's recommendation for disposing of collateral, collateral was thereby unjustifiably impaired so as to discharge guarantor under UCC § 9-606(1)(b), since guarantor had waived its right to claim such discharge by consenting in its guaranty to auction sale as appropriate method for disposal of collateral. Moreover, such consent was not vitiated by creditor's alleged failure to meet its obligation under UCC § 9-504(3) to dispose of collateral in commercially reasonable manner — which obligation assertedly was not met because of creditor's failure to follow guarantor's recommendation which purportedly would have resulted in a higher price for the collateral-since UCC § 9-507(2) expressly states that fact that different method of disposition would have produced a better price does not of itself establish that sale was not made in a commercially reasonable manner. In addition, UCC § 9-507(2) also states that disposition of collateral that has been approved in any judicial proceeding shall conclusively be deemed to be commercially reasonable, and in present case sale of collateral had been approved by court in debtor's receivership proceedings, and guarantor had not attempted to restrain such sale after creditor had committed itself to an auction sale. Rhode Island Hosp. Trust Nat'l Bank v. National Health Found., 119 R.I. 823, 384 A.2d 301 (1978).

Public liquidation sale of debtor's inventory by federal Small Business Administration was commercially reasonable under UCC § 9-504(3) where (1) sale was adequately advertised in large newspaper of general circulation on three occasions prior to sale, (2) 400 direct advertisements were mailed to trade persons prior to sale, (3) defendant was given reasonable notification of sale, and (4) conduct of sale fully complied with statute's requirements. United States ex rel. Small Bus. Admin. v. Gore, 437 F. Supp. 344 (E.D. Pa. 1977).

Sale of repossessed new motor homes was commercially reasonable under UCC § 9-504 where (1) sale was conducted at time of extremely depressed market, (2) sale of units by private and public sale brought in excess of 75 per cent of total indebtedness, (3) expenses of sale were very low inuring to debtor's benefit, and (4) expense of conducting auction sale, including advertising and commissions, would have been much higher, with no guarantee that any greater amount would have been received from such sale under conditions of market. Pruske v. National Bank of Commerce, 533 S.W.2d 931 (Tex. Civ. App. 1976).

Where debtor had knowledge of location of lot where repossessed cars were being sold, contacted and sent perspective buyers to lot, was notified of time and place of auctions, and where none of cars were sold until after agreement for disposition of collateral was signed by debtor, disposition of collateral was conducted in commercially reasonably manner and secured party was entitled to deficiency judgment pursuant to UCC § 9-504. Teeter Motor Co. v. First Nat'l Bank, 260 Ark. 764, 543 S.W.2d 938 (1976).

Sale of repossessed logging equipment at public auction was reasonable despite contentions that better price could have been received elsewhere and that better price could have been received if machine were disassembled and sold for parts; receipt of notice of sale by debtor was not required under UCC, only requirement being reasonable attempt of repossessor to notify, and debtor could not rely upon misstatement of place of sale in notice of sale where debtor claimed he never received notice. James Talcott, Inc. v. Reynolds, 165 Mont. 404, 529 P.2d 352 (1974).

Sale of property of bankrupt cosmetic manufacturer for purpose of liquidation was commercially reasonable where it was adequately advertised, conducted by experienced auctioneer, and 14 people registered their presence at the auction, despite fact that it resulted in $3,000 bid for property having a much higher cost value. In re Zsa Zsa, Ltd., 352 F. Supp. 665 (S.D.N.Y. 1972), aff'd, 475 F.2d 1393 (2d Cir. N.Y. 1973).

A trial court possessing equity powers, having acquired jurisdiction of an action to foreclose a real estate mortgage executed by the trustee of a land trust to a savings and loan association, had power to order the sale of the certificate of beneficial interest in the same land trust which had been pledged as collateral security to another savings and loan association in liquidation, and the subsequent sale of the beneficial interest in open court at public auction complied with the provisions of subsec. (3) of this section. Lawn Sav. & Loan Ass'n v. Quinn, 81 Ill. App. 2d 304, 225 N.E.2d 683 (1st Dist. 1967).

15. —Method and manner; not reasonable.

Where collateral soybeans were removed from storage bin at creditor's direction and allowed to remain piled up in an open building for almost six weeks prior to sale, procedures used by creditor to liquidate collateral were so devoid of any hint of commercial reasonableness that debtor could not be considered to have waived rights to protest disposition of collateral through language of farm storage notes and security agreements. Jones v. United States ex rel. Commodity Credit Corp., 107 B.R. 888 (Bankr. N.D. Miss. 1989).

Disposition of collateral, which consisted of an electronic two-way communications system, was not commercially reasonable under UCC § 9-504(3) where (1) secured party was successful bidder at public auction of the collateral, (2) only one other bid was made, (3) bidders in attendance at sale with any real interest in the collateral were few in number, (4) few efforts were made to encourage meaningful bidding, and (5) substantial disparity existed between price recovered on the disposition ($32,775) and deficiency for which judgment was sought (slightly over $325,000). Associates Capital Servs. Corp. v. Riccardi, 454 F. Supp. 832 (D.R.I. 1978).

Disposition by creditor of debtor corporation's collateral, pursuant to security agreements entered into by debtor to secure note evidencing loan made by creditor, was commercially unreasonable under UCC § 9-504(3) where (1) creditor admitted that although it ordinarily utilized public auctions to sell collateral only as last resort, it had decided in present case to sell debtor's collateral at public auction only two days after collateral was turned over to creditor; (2) creditor did not take any history of debtor's business or inventory and appraise debtor's assets, including contracts entered into by debtor with its customers; (3) creditor made no effort to find person who would buy debtor corporation; (4) creditor refused to postpone auction sale of collateral for three weeks in order to give prospective buyer of debtor corporation, whom creditor had not located, sufficient time to consider such purchase, even though delay would only have cost creditor one month's rent on debtor's premises; (5) creditor further required that prospective purchaser make firm offer of $50,000 for debtor's business, even though piecemeal sale of debtor's collateral at public auction realized only $15,000; and (6) creditor did not even try to sell as integrated units two nearly completed signs that debtor was constructing for commercial use, which allegedly were worth $56,000. United States v. Terrey, 554 F.2d 685 (5th Cir. Tex. 1977).

Where bank upon default repossessed automobile which secured note, giving debtor notice of sale and where bank, before car was transferred to buyer after public sale, was notified by state police that car was stolen, bank's disposition of debtor's collateral by surrendering automobile to police upon oral request without requiring proof that car was stolen, without giving notice to debtor of seizure of car, thus depriving debtor of opportunity to defend title, was not commercially reasonable within meaning of UCC 9-504(3) and debtor was entitled to credit on indebtedness owed to bank from proceeds of nonconsumated public sale of automobile. New Jersey Bank v. Green, 145 N.J. Super. 560, 368 A.2d 431 (1976).

In action by assignee of automobile conditional sales contract against conditional vendee, trial court erred in determining that plaintiff was entitled to deficiency judgment, where complaint alleged only that defendant's automobile was repossessed, that notice of sale was sent, and that automobile was sold for stated sum, which amounted to less than 50 per cent of wholesale blue book value, where only evidence bearing on manner of resale was that automobile was stored, was available for inspection, and five bids were submitted, and where there was no evidence explaining substantial discrepancy between price received and book value. Failure to use "best efforts" to obtain highest possible price for collateral was breach of secured party's obligation under UCC § 9-504, to act in good faith and in commercially reasonable manner. Credit Bureau Metro, Inc. v. Mims, 45 Cal. App. 3d Supp. 12 (App. Dep't Super. 1975).

Where secured party did not advertise or otherwise make normal and reasonable contacts within the industry but rather took the quick and easy way out by selling the aircraft in question to the same people who had been using it, the sale was not conducted in a "commercially reasonable manner" which was required before secured party could recover deficiency judgment. Dynalectron Corp. v. Jack Richards Aircraft Co., 337 F. Supp. 659 (W.D. Okla. 1972).

Where after repossession of yacht seller placed single advertisement in newspaper but failed to advertise in any of customary yachting publications, did not seek services of yacht broker, obtained no purchase offers other than three which had "curiously improbable air," and allowed yacht to depreciate at ruinously progressive rate over two full boating seasons, his conduct did not indicate that he had accepted and retained collateral in satisfaction of obligation, but was not commercially reasonable; and buyer's widow was entitled in action for accounting to credit equal to value of yacht at time of repossession. Harris v. Bower, 266 Md. 579, 295 A.2d 870, 55 A.L.R.3d 640 (1972).

16. —Time.

Where assignee (secured party) of equipment lease of drilling machine, on default of colessees, repossessed machine and, without giving written notice of any public or private sale thereof to either colessees or lease's guarantors, sold machine more than one year after repossessing it, assignee was not entitled to deficiency judgment because of its failure to act in good faith and in commercially reasonable manner under UCC § 9-504(3). National Equip. Rental, Ltd. v. Holes, Inc., 460 F. Supp. 118 (C.D. Cal. 1978), aff'd, 642 F.2d 456 (9th Cir. Cal. 1981).

Mobile home is not collateral that threatens to decline speedily in value within meaning of UCC § 9-504(3). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Disposition by creditor of debtor corporation's collateral, pursuant to security agreements entered into by debtor to secure note evidencing loan made by creditor, was commercially unreasonable under UCC § 9-504(3) where (1) creditor admitted that although it ordinarily utilized public auctions to sell collateral only as last resort, it had decided in present case to sell debtor's collateral at public auction only two days after collateral was turned over to creditor; (2) creditor did not take any history of debtor's business or inventory and appraise debtor's assets, including contracts entered into by debtor with its customers; (3) creditor made no effort to find person who would buy debtor corporation; (4) creditor refused to postpone auction sale of collateral for three weeks in order to give prospective buyer of debtor corporation, whom creditor had not located, sufficient time to consider such purchase, even though delay would only have cost creditor one month's rent on debtor's premises; (5) creditor further required that prospective purchaser make firm offer of $50,000 for debtor's business, even though piecemeal sale of debtor's collateral at public auction realized only $15,000; and (6) creditor did not even try to sell as integrated units two nearly completed signs that debtor was constructing for commercial use, which allegedly were worth $56,000. United States v. Terrey, 554 F.2d 685 (5th Cir. Tex. 1977).

Where equipment lessees were given ample time to arrange for sale of equipment following their default under lease agreement, sale of equipment by lessors was conducted in commercially reasonable manner, and lessees failed to timely raise issue as to lack of statutory notice of sale pursuant to UCC § 9-504(3), lessor was entitled to recover balance due under lease. Maguire Leasing Corp. v. Irving Falb & Co., 49 A.D.2d 540 (1st Dep't 1975).

Secured party's retention of depreciable collateral, an automobile, without sale for two years after debtor defaulted and automobile was repossessed, although requiring close scrutiny of secured party's actions, was not unreasonable in view of evidence, inter alia, that vehicle was in such poor condition on repossession that secured party could not resell it; nor did retention of collateral for two years constitute satisfaction of debtor's obligation under UCC § 9-505(2), thus depriving secured party of right to sue on note. Jones v. Morgan, 58 Mich. App. 455, 228 N.W.2d 419 (1975).

In action by secured party to recover deficiency judgment after repossession and sale of collateral, secured party must allege and, unless admitted, prove that sale was commercially reasonable as required by UCC § 9-504(3); relevant factors in determining commercial reasonableness include amount of advertising done, normal commercial practices in disposing of particular collateral, length of time elapsing between repossession and resale, whether deterioration of collateral has occurred, number of persons contacted concerning sale and price obtained. Clark Leasing Corp. v. White Sands Forest Prods., Inc., 87 N.M. 451, 535 P.2d 1077, 10 A.L.R.4th 404 (1975).

In view of question whether published notice of sale of repossessed bulldozer might have indicated to casual observer that sale had already taken place, total absence of evidence about normal commercial practices in disposition of this type of collateral, length of time elapsing between repossession and sale, possibility that bulldozer may have abnormally deteriorated during that period, failure of seller to notify persons who had expressed interest in purchasing equipment of intended sale, and evidence of remarks made by one who may have been taken to be seller's manager indicating his indifference to price for which bulldozer might be sold, jury question was presented as to seller's good faith and commercial reasonableness of every aspect of disposition of collateral. Farmers Equip. Co. v. Miller, 252 Ark. 1092, 482 S.W.2d 805 (1972).

17. —Place.

Jury finding that creditor had conducted public sale of collateral in commercially reasonable manner required by UCC § 9-504(3) was supported by evidence which showed (1) that creditor had advertised sale for two days in Houston, Texas daily newspaper, (2) that it had mailed notices to 19 used-equipment companies, (3) that prospective purchaser from Oklahoma City, Oklahoma, who received one of the mailed notices, had come to Houston and inspected the property, (4) that all but two of the used-equipment companies notified by the creditor had done business (5) debtor produced no evidence that it did not understand or could not deduce place of sale from notice and also failed to show that it had been prejudiced by omission of "Houston, Texas" from address of place of sale. Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4 (Tex. Civ. App. 1978), ref. n.r.e (Dec. 6, 1978).

Mobile home is not collateral that threatens to decline speedily in value within meaning of UCC § 9-504(3). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Where owner of automobile, which was repossessed after default on installment contract, did not receive notice of place of public sale and where, although automobile was in good condition, proceeds obtained less than six months after initial purchase were only about 55% of the amount originally financed, creditor could not recover deficiency judgment in absence of showing that the method, manner, time, place and terms of sale were in fact commercially reasonable. Marine Midland Bank-Central v. Watkins, 89 Misc. 2d 949 (1977).

Evidence raised sufficient question concerning notice of location of foreclosure sale and the sale's commercial reasonableness under UCC § 9-504 so as to warrant injunction to preserve status quo until resolution of issue at trial, where evidence indicated that notice of sale specified "door of the Courthouse" which was uniformly interpreted as meaning the south door, that no foreclosure sale had ever been conducted at any other courthouse door, that notice of sale was posted at the south door but not at the north door, that persons attempting to serve restraining order went to south door, but that sale was conducted at the north door. Jones v. Garcia, 538 S.W.2d 492 (Tex. Civ. App. 1976).

Foreclosure sale of stock in small, closely-held corporation, which stock had been pledged to secure loan to debtors, was conducted in commercially reasonable manner as required by UCC § 9-504(3) where due notice was published and also given to debtors, public auction conducted by secured party's attorney took place on noticed date, secured party made best and only offer in amount of stock's book value, and amount bid was fair since stock represented only minority interest in corporation; fact that sale took place in one city, although business of corporation was located in another city, did not make sale unreasonable considering that debtors' note was pledged in first city and corporate headquarters of secured party was also in first city. Nola v. Merollis Chevrolet Ky. City, Inc., 537 S.W.2d 627 (Mo. Ct. App. 1976).

In action by noteholder for deficiency after sale of collateral, noteholder had burden of proving defendant was given proper notice of sale within meaning of UCC § 9-504(3). Notice was misleading, inaccurate and unreasonable where automobile being sold was not present, where defendant was not given opportunity to bid, where no other potential purchasers were present, where alleged "public sale" was held in Chicago law office while collateral was located in another city, and where bids were received at undisclosed price from undisclosed persons. General Foods Corp. v. Hall, 39 Ill. App. 3d 147, 349 N.E.2d 573 (1st Dist. 1976).

Sale of two aircraft at public sale was commercially reasonable, notwithstanding fact that due to combination of bad weather and mechanical failure only one aircraft was present at sale, where good and sufficient notice was timely given to reasonable number of prospective buyers, no prospective bidders present at public sale questioned absence of plane and asked for inspection, circumstances attending absence of plane were beyond control of secured party and excusable, holding of sale at time and place scheduled was to best interest of all and fair price was secured. C.I.T. Corp. v. Lee Pontiac, Inc., 513 F.2d 207 (9th Cir. Idaho 1975).

18. —Terms.

Secured party conducted sale of collateral consisting of grocery store inventory and fixtures in commercially reasonable manner under UCC §§ 9-504(3) and 9-507(1) where, although notice was given to debtor that private sale would be conducted on or after August 4, 1975, conditional sale of inventory was made to buyer before August 4, subject to secured party's not receiving higher price for inventory, where buyer paid $28,000, which represented 75 per cent of retail value of inventory, was going market rate for inventory and was in fact amount debtor paid when he purchased grocery store, and where although debtor had repurchase agreement with previous owner's store for fixtures at price of $24,000, secured party sold fixtures to purchaser of inventory for $8,000 less because purchaser had agreed to purchase inventory at 75 per cent of retail. First Nat'l Bank & Trust Co. v. Halston, Okla., (1976).

Under UCC, adequacy or insufficiency of price for which collateral is sold at private sale after default and repossession is one of "terms" of sale, and is relevant along with other issues, in determining whether sale was commercially reasonable. Associates Fin. Co. v. Teske, 190 Neb. 747, 212 N.W.2d 572 (1973).

Under UCC §§ 9-504(3) and 9-507(2), the adequacy or insufficiency of the price for which collateral is sold at a private sale after default and repossession is one of the "terms" of sale, and is relevant along with other issues, in determining whether the sale was commercially reasonable. First Nat'l Bank v. Rose, 188 Neb. 362, 196 N.W.2d 507 (1972).

19. —Terms; condition of collateral.

Evidence that secured party offered repossessed equipment for sale in same condition it was in when it was repossessed, uncleaned and unwashed, was relevant in determining whether sale of collateral by secured party was commercially reasonable as required by UCC § 9-504. Furthermore, where advertisements for sale stated terms were to be cash, but at beginning of sale secured party's representative announced that terms were to be cash or certified check, jury could have found this changed terms of sale from cash or approved uncertified check to cash or certified check and that such change dissuaded prospective purchasers from bidding and was commercially unreasonable. Weiss v. Northwest Acceptance Corp., 274 Or. 343, 546 P.2d 1065 (1976).

Secured party was not entitled to recover alleged deficiency due after sale of repossessed automobile since (1) three days' notice of resale was not commercially reasonable under UCC § 9-504(3); (2) sale of automobile for only $50 was not in good faith, under UCC § 1-203, or in commercially reasonable manner under UCC § 9-504(3), although automobile was inoperable, where casual inspection would have revealed that automobile was missing spark plugs, points and air cleaner, and installation of these items would have made car operative and would only have required small expenditure; and (3) presumption that collateral was worth at least amount of debt, which arose as result of secured creditor's failure to give sufficient notice of resale, was not overcome by creditor's evidence. Franklin State Bank v. Parker, 136 N.J. Super. 476, 346 A.2d 632 (1975).

20. —Terms; price adequate.

Secured creditor's foreclosure sale was conducted in commercially reasonable manner, even though subsequent sale of collateral purchased by secured creditor at foreclosure sale enabled secured creditor to receive an amount over and above price paid at foreclosure sale. In re Whatley, 126 B.R. 231 (Bankr. N.D. Miss. 1991).

Disposition of collateral, which consisted of an electronic two-way communications system, was not commercially reasonable under UCC § 9-504(3) where (1) secured party was successful bidder at public auction of the collateral, (2) only one other bid was made, (3) bidders in attendance at sale with any real interest in the collateral were few in number, (4) few efforts were made to encourage meaningful bidding, and (5) substantial disparity existed between price recovered on the disposition ($32,775) and deficiency for which judgment was sought (slightly over $325,000). Associates Capital Servs. Corp. v. Riccardi, 454 F. Supp. 832 (D.R.I. 1978).

In action by debtor for creditor's wrongful repossession and conversion of collateral, evidence of value of collateral at time it was sold, where creditor did not give debtor notice of sale required by UCC § 9-504(3), was relevant because it went toward proof of conversion. Ott v. Fox, 362 So. 2d 836 (Ala. 1978).

Creditor's notice of public sale of collateral was sufficient under UCC § 9-504(3) to inform reasonable business persons of place of sale where (1) such notice was sent to debtor's office in Dallas, Texas; (2) creditor's attorney, who signed notice, gave Houston, Texas address and phone number; (3) address of place of sale was given as "11601 North Houston-Rosslyn Road," although name of city (Houston) in which sale was to take place was not given; (4) name of owner of property to be sold was listed on notice as "Compression, Inc. of Houston, Texas"; and with owner of place in Houston, Texas where sale was conducted and thus had not been misled by failure of notice to state that place of sale was located in Houston, (5) that property had been brought to Houston, where demand for it was greatest, (6) that creditor had obtained property for $100,000 and had later resold it for the same price, (7) that property's subsequent purchaser had refabricated it at some expense and ultimately had obtained only $140,000 for it, (8) that demand at time of sale for that type of property was not great, and (9) that property's fair-market value ($150,000) did not render its sale price ($100,000) grossly inadequate. Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4 (Tex. Civ. App. 1978), ref. n.r.e (Dec. 6, 1978).

In action to recover balance due on guaranty agreement executed in connection with conditional sales contract for purchase of back hoe, which was repossessed after buyer's default in making payments and sold to highest bidder for $10,500, where hoe had been appraised as having an "as is" trade-in value of $20,000 and, if repaired, a value of up to $25,000, and where guarantor alleged that sale of hoe was therefore not commercially reasonable under UCC § 9-504(3), court held that marked discrepancy between hoe's appraised value and its sale price raised sufficient question as to whether its sale had been conducted in commercially reasonable manner to warrant trial on such issue. GECC v. Durante Bros. & Sons, 96 Misc. 2d 561 (1978).

The secured party has the burden of showing that the sale of repossessed collateral was commercially reasonable, as required by UCC § 9-504(3). This burden may not be satisfied without affirmatively establishing that the terms of the sale were commercially reasonable. This, in turn, requires the secured party to show that the sale price was the fair and reasonable value of the collateral. Vines v. Citizens Trust Bank, 146 Ga. App. 845, 247 S.E.2d 528 (1978).

Contention that creditor did not dispose of collateral in commercially reasonable manner required by UCC § 9-504(3), on ground that creditor failed to prove either value of collateral at time of its repossession or that its resale price was fair and reasonable, was not sustainable where record showed (1) that collateral consisted of thousands of automobile parts, each of which had to be individually inventoried, evaluated, and priced, (2) that total value of all such items was approximately $39,000 at time of repossession, (3) that collateral was stored in creditor's warehouse without charge to debtor, (4) that bids were solicited from 150 automobile parts dealers, (5) that approximately one dozen inquiries were made and five bids were submitted, and (6) that collateral was sold to highest bidder for $15,000. Ace Parts & Distrib., Inc. v. First Nat'l Bank, 146 Ga. App. 4, 245 S.E.2d 314 (1978).

Where no compliance with notice of sale provision has been shown, burden of proving that market value of collateral was received at sale is upon secured party; held, burden was met where it was established that best available current price for four repossessed dump trucks was received and that sale was made in commercially reasonable manner; therefore, trial judge could have concluded that reasonable man could not find that any damages were suffered by virtue of failure to give notice of sale after repossession. Weaver v. O'Meara Motor Co., 452 P.2d 87 (Alaska 1969).

Where the conditional purchaser of repossessed construction equipment received credit for the full price paid for it at the sale conducted by the security holder, the effect was as if the equipment had been sold for the exact amount the debtor had paid for it, and the debtor could not complain that he was not given notice of the sale as provided for in subd (3) of this section, the sale having been a commercially reasonable one, and the debtor made no offer of proof that the price paid for the security was less than its actual value. BSY Co. v. Fuel Economy Eng'g Co., 399 S.W.2d 308 (Ky. 1965).

21. —Terms; price inadequate.

Although UCC § 9-507(2) provides that the fact that a better price could have been obtained at a different time or in a different method from that selected by the secured party is not, by itself, sufficient to establish that the sale was not made in a commercially reasonable manner, price is nevertheless a "term" of sale under UCC § 9-504(3). Associates Capital Servs. Corp. v. Riccardi, 454 F. Supp. 832 (D.R.I. 1978).

In creditor's action again trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed or distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

In action by debtor for creditor's wrongful repossession and conversion of collateral, evidence of value of collateral at time it was sold, where creditor did not give debtor notice of sale required by UCC § 9-504(3), was relevant because it went toward proof of conversion. Ott v. Fox, 362 So. 2d 836 (Ala. 1978).

Where owner of automobile, which was repossessed after default on installment contract, did not receive notice of place of public sale and where, although automobile was in good condition, proceeds obtained less than six months after initial purchase were only about 55% of the amount originally financed, creditor could not recover deficiency judgment in absence of showing that the method, manner, time, place and terms of sale were in fact commercially reasonable. Marine Midland Bank-Central v. Watkins, 89 Misc. 2d 949 (1977).

Secured party failed to sustain its burden of proving that disposition of collateral was commercially reasonable, as required by UCC § 9-504(3), where it sold repossessed automobile, which had been purchased for over $1600 some three months earlier, for $300 at auction sale which had been advertised once, and where possibilities for self-dealing were substantial; thus, secured party was barred from recovering deficiency under UCC § 9-504(2). Central Budget Corp. v. Garrett, 48 A.D.2d 825 (2d Dep't 1975).

It was necessary for seller of automobile to establish that every aspect of sale of automobile after buyer's default was commercially reasonable, including adequacy of price for which automobile was sold; and private sale by seller which took place by means of inter-office exchange of papers with automobile sold back into seller's inventory at appraised "wholesale" value was as matter of law commercially unreasonable. Vic Hansen & Sons v. Crowley, 57 Wis. 2d 106, 203 N.W.2d 728, 59 A.L.R.3d 360 (1973).

Auto dealer sold car to defendant-buyer for net sum of $1700; dealer assigned sales contract to plaintiff-assignee; plaintiff-assignee repossessed auto and sold it back to dealer for $348; held, sale was not "commercially reasonable" disposition of collateral. Jefferson Credit Corp. v. Marcano, 60 Misc. 2d 138 (1969).

Where after repossession, a finance company sold an automobile for less than one-half of one recognized criterion of market price, there were equitable grounds for giving debtors right to prove that the sale was not made in a commercially reasonable manner. Family Fin. Corp. v. Scott, 24 Pa. D. & C.2d 587 (1961).

22. Purchase by creditor; public sale.

Disposition of collateral, which consisted of an electronic two-way communications system, was not commercially reasonable under UCC § 9-504(3) where (1) secured party was successful bidder at public auction of the collateral, (2) only one other bid was made, (3) bidders in attendance at sale with any real interest in the collateral were few in number, (4) few efforts were made to encourage meaningful bidding, and (5) substantial disparity existed between price recovered on the disposition ($32,775) and deficiency for which judgment was sought (slightly over $325,000). Associates Capital Servs. Corp. v. Riccardi, 454 F. Supp. 832 (D.R.I. 1978).

Creditor's foreclosure sale of jet aircraft was not commercially reasonable under UCC § 9-504(3) where (1) creditor incurred minimal expense in advertising plane for sale; (2) creditor made no effort to interest groups of dealers in buying plane, although a group of dealers was the most logical buyer; (3) creditor bought plane for $325,000, although its minimum fair-market value was at least $700,000, and later resold it for $855,000; and (5) creditor kept plane at secret location until time of sale, thus preventing potential buyers from inspecting it. Connex Press, Inc. v. International Airmotive, Inc., 436 F. Supp. 51 (D.D.C. 1977), aff'd, 574 F.2d 636, 187 U.S. App. D.C. 425 (1978).

Summary final judgment was improperly entered in action for deficiency judgment against guarantor of debt of corporation where evidence showed (1) that debtor corporation had given creditor chattel mortgage on airplane as security for debt, (2) that airplane had been sold at public sale by county sheriff for sales and use taxes assessed against debtor corporation, and (3) that creditor had purchased airplane at such sale and thereafter resold it, allegedly at private sale not conducted in commercially reasonable manner required by UCC § 9-504(3), and had applied proceeds against principal amount due on debtor corporation's note. In such case, creditor's contention that since it owned airplane after sheriff's sale, it was therefore under no requirements whatever concerning its subsequent sale could not be sustained, since action was for deficiency judgment after creditor's private sale of plane and such sale, if it were to produce a deficiency, was an element of the action that had to be proved without genuine issue before a summary final judgment could be entered. Applestein v. National Bank of Tulsa, 358 So. 2d 106 (Fla. App. 1978).

Plaintiff bank, which made a corporate loan for the purchase of two mechanical devices used in the manufacture of elevator equipment, the loan being secured by a chattel mortgage on the purchased equipment, a contract of repurchase of the equipment by the seller of the equipment at a reduced purchase price and the personal guarantees of the three defendants who formed the corporation and were the sole stockholders, and which then, upon default and repossession of the equipment, did not seek to enforce the agreement of repurchase, but instead hired the seller of the equipment to act as its agent for the purpose of selling the repossessed equipment, which the seller purchased for itself at the foreclosure sale and then later resold at a profit, is not entitled to a deficiency judgment against defendants since plaintiff failed to sustain its burden of proof of "reasonable notification" of sale to the debtor corporation and that "the method, manner, time and terms" of the disposition were "commercially reasonable". (Uniform Commercial Code, § 9-504.) Although the mere fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a "commercially reasonable" manner, defined as the disposition of security "made in the good faith attempt to dispose of the collateral to the parties' mutual best advantage", where, however, marked discrepancies between the disposal and sale prices signal a need for closer scrutiny, especially where the possibility for self-dealing is substantial, the creditor should be denied a deficiency judgment in the absence of some affirmative showing that the terms of the disposition were in fact commercially reasonable. Since plaintiff offered no proof of the "fair value" of the security either at the time of repossession or sale, there is no need to determine if a creditor has the optional alternative of recovering a deficiency judgment "by proving the amount of the debt, the fair value of the security and the resulting deficiency". (See Security Trust Co. v. Thomas, (1977, 4th Dept) 59 AD2d 242, 399 NYS2d 511, 22 UCCRS 1305.) Banker's Trust Co. v. Steenburn, 95 Misc. 2d 967 (1978), aff'd, 70 A.D.2d 786 (4 Dep't 1979).

Under UCC § 9-501(1), as explained in Official Comment 6, a secured party is entitled to reduce his claim to judgment or to foreclose his interest by any available procedure outside Art 9 that state law may provide. The first sentence of UCC § 9-501(5) makes clear that any judgment lien that the secured party may acquire against the collateral is a continuation of his original interest (if perfected) and not the acquisition of a new interest or a transfer of property to satisfy an antecedent debt. The judgment lien is therefore said to relate back to the date of perfection of the security interest. The second sentence of UCC § 9-501(5) makes clear that a judicial sale following judgment, execution, and levy is one of the methods of foreclosure contemplated by UCC § 9-501(1). Such a sale is governed by other law and not by Art 9, and the restrictions that Art 9 imposes on the right of a secured party to buy in the collateral at a sale under UCC § 9-504 do not apply. Bilar, Inc. v. Sherman, 40 Colo. App. 38, 572 P.2d 489 (1977).

Where secured party conducts public sale of repossessed chattels having no market value, after advertising and notifying all interested parties, his good faith purchase of such chattels after no bidders appear is not sufficient of itself to establish that sale was not made in commercially reasonable manner. Northern Fin. Corp. v. Kesterson, 31 Ohio App. 2d 256, 287 N.E.2d 923 (1971).

23. —Private sale.

Where debtor was notified that automobile (collateral) would be sold at private sale, and secured party displayed automobile in public place (secured party's automobile sales lot) with a "for sale" sign on it, debtor could not successfully contend that notice of sale was not in compliance with UCC § 9-504(3), since private offers were taken for the vehicle and it was sold privately. In such case, fact that vehicle was displayed for sale in public place did not make sale a public sale. Lloyd's Plan, Inc. v. Brown, 268 N.W.2d 192 (Iowa 1978).

In action to recover deficiency judgment for breach of retail instalment contract for purchase of second-hand front end loader, following resale of loader after buyer's default, where seller gave buyer oral notice of intention to place loader back on its lot and offer it for sale, and where buyer knew where loader was located, why it was being sold and had three months to find buyer or bid on it himself, buyer's actual knowledge of expected sale was sufficient to constitute reasonable notice under UCC § 9-504(3) as sale was private sale of collateral in normal course of seller's business. Bondurant v. Beard Equip. Co., 345 So. 2d 806 (Fla. App. 1977).

Since secured creditor had right under UCC § 9-503 to repossess collateral upon default, repossession by agent of creditor was not conversion, even though repossession was without notice, and private sale of repossessed collateral was not conversion, even though sale was not commercially reasonable as required by UCC § 9-504. Thurmond v. Elliott Fin. Co., 141 Ga. App. 574, 234 S.E.2d 153 (1977).

Where seller of automobile repossessed after buyer breached contract, repaired automobile and placed it on lot for sale in ordinary course of business as automobile dealer, such sale was a private one, and not one made at auction or by way of competitive bidding; thus, notice requirements of UCC § 9-504(3) were satisfied by notice to buyer of time after which collateral was to be sold. Contois Motor Co. v. Saltz, 198 Neb. 455, 253 N.W.2d 290 (1977).

Secured party had right to take possession of hay and sell it at private sale pursuant to UCC § 9-504, although it was disputed whether notice occurred in September or October of 1968, where debtor had sufficient notice to allow him to take steps to protect his interest in the hay prior to its sale in December 1968 and January 1969. Oral notice was sufficient to meet requirements of UCC § 9-504(3). Fairchild v. Williams Feed, Inc., 169 Mont. 18', 544 P.2d 1216, 11 A.L.R.4th 235 (1976).

Private sale of repossessed furniture was not commercially reasonable under UCC § 9-504(3) where secured party purchased repossessed furniture himself after he had decided what it would bring on resale and where, although time was not of essence, secured party only contacted one dealer to attempt sale; furthermore, secured party was not authorized to buy at private resale under § 9-504(3) since repossessed furniture was not of type customarily sold in recognized market nor subject to widely distributed standard price quotations. Luxurest Furn. Mfg. Co. v. Furniture Whse. Sales, Inc., 132 Ga.

App. 661, 209 S.E.2d 63 (1974), rev'd on other grounds sub nom. Gurwitch v. Luxurest Furn. Mfg. Co., 233 Ga. 934, 214 S.E.2d 373 (1975), vacated 134 Ga. App. 528, 215 S.E.2d 292 (1975).

Where testimony was in substantial agreement that there was no widespread market for used restaurant equipment, particularly kind specifically designed for use of particular franchise, and all parties testified that they knew of no standard price quotations for such equipment, such collateral was not of type that could have been validly purchased by secured party at private sale under UCC § 9-504(3) and such purchase by secured party violated UCC §§ 9-501 and 9-507. Wirth v. Heavey, 508 S.W.2d 263 (Mo. Ct. App. 1974).

Secured party who purchased collateral at private sale failed to comply with UCC § 9-504(3) and was not entitled to deficiency judgment against debtors where collateral consisted of fixtures used in restaurant business and, thus, was not collateral of type customarily sold in recognized market or type which was subject of widely or regularly distributed standard price quotations; furthermore, language of security agreement, which provided that secured party could purchase collateral at private sale, constituted antecedent waiver of provisions of UCC § 9-504(3), in violation of UCC § 9-501(3) and was, therefore, contrary to public policy and void. Barber v. LeRoy, 40 Cal. App. 3d 336 (2d Dist. 1974).

24. Debtor's remedies.

The failure to give a debtor notice of sale when required under subd (3) of this section does not completely discharge his obligation to pay any resulting deficiency, but he has the right to recover from the secured party any loss occasioned by the failure to give notice. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

Debtor who alleged that secured party had sold repossessed collateral without sending debtor notice required by UCC § 9-504(3), but who did not show that collateral was consumer goods or that he had sustained identifiable loss as result of secured party's failure to notify, was not entitled to penalty imposed by UCC § 9-507(1) for such failure to notify. Hensley v. Lubbock Nat'l Bank, 561 S.W.2d 885 (Tex. Civ. App. 1978).

A cause of action based upon the claim that a sale of pledged collateral was made under circumstances which were not commercially reasonable in violation of subdivision (3) of section 9-504 of the Uniform Commercial Code is not an action to recover on a liability imposed by statute within the meaning of CPLR 214 (subd 2) requiring that such actions be commenced within three years, since the duty to conduct a commercially reasonable sale of pledged property exists apart from statute under the general maxims of equity and in order for the three-year limitation to attach the liability must be one which would not exist but for statute. Sumner v. Century Nat'l Bank & Trust Co., 92 Misc. 2d 726 (1978).

Secured party's failure to give debtor notice of time and place of sale of collateral, as required by UCC § 9-504(3), will not release debtor from any deficiency that may exist after the sale. In such case, however, debtor under UCC § 9-507(1) may receive credit or recover damages for any loss that he sustained as result of such failure to notify. Zions First Nat'l Bank v. Hurst, 570 P.2d 1031 (Utah 1977).

In action by federal Small Business Administration for deficiency judgment on note following sale of collateral which was security for note, allowance of debtor's counterclaim for damages under UCC § 9-507(1) for creditor's noncompliance with UCC § 9-504(3) by selling collateral in commercially unreasonable manner would be sustained where evidence sufficiently showed, among other things, that sale had been inadequately advertised and that collateral had been sold for $20,000, even though creditor had assessed its value at nearly $90,000 six months before the sale. In such case, moreover, since remedy provided in UCC § 9-507(1) for creditor's noncompliance with UCC § 9-504(3) precluded debtor from setting up bar to deficiency judgment for creditor, deficiency judgment obtained by creditor would also be sustained. Barbour v. United States, 562 F.2d 19 (10th Cir. Kan. 1977).

Failure of secured party after repossession of automobile to give debtor notice of private sale as required by UCC § 9-504(3) did not work absolute forfeiture of debtor's indebtedness to secured party, since security agreement provided that debtor would be liable for deficiency after application of proceeds of sale as provided by UCC § 9-504(2); failure to give notice did, however, entitle debtor to recover from secured party any actual loss caused by such failure and, in case of sale of consumer goods such as automobile, debtor also had right to recover "amount not less than the credit service charge plus ten per cent (10%) of the principal amount of the debt or the time price differential plus ten per cent (10%) of the cash price" pursuant to UCC § 9-507(1). Furthermore, failure to give required statutory notice imposed upon creditor burden of establishing that sale was made in conformity with "reasonable commercial practices" as required by UCC § 9-507(2) and that sum received for chattel represented its fair market value. Walker v. V.M. Box Motor Co., 325 So. 2d 905 (Miss. 1976).

Even if secured party failed to comply with provisions of UCC § 9-504(3), debtor would not be discharged from all liability under contract, but would rather be entitled under UCC § 9-507(1) to recover for damages caused thereby. Stanchi v. Kemp, 48 A.D.2d 973 (3d Dep't 1975).

Secured party's failure to dispose of repossessed collateral in commercially reasonable manner as required by UCC § 9-504(3) does not result in forfeiture of right to deficiency, but only requires that amount of claimed deficiency be reduced by amount of any loss occasioned by its failure to sell in commercially reasonable manner; if sale is not conducted according to UCC, amount received is not evidence of market value of collateral and secured party has burden of proving market value by other evidence. Clark Leasing Corp. v. White Sands Forest Prods., Inc., 87 N.M. 451, 535 P.2d 1077, 10 A.L.R.4th 404 (1975).

Evidence did not support alleged violation of § 9-504, where creditor gave formal written notice of intended private sale of corporate stock held as collateral and there was no allegation that stock was sold for less than its true value. Dopp v. Franklin Nat'l Bank, 461 F.2d 873 (2d Cir. N.Y. 1972), on remand, 374 F. Supp. 904 (S.D.N.Y. 1974).

Creditor may obtain deficiency judgment despite failure to comply fully with requirement of Code § 9-504(3), and in such instances debtor's relief is limited to rights set forth in Code § 9-507(1). Lincoln Rochester Trust Co. v. Howard, 75 Misc. 2d 181 (1973).

Direct effect of sale that is not commercially reasonable under Code § 9-504 is to alter measure of deficiency, and in such case fair and reasonable value of collateral as of time of sale is offset against balance due on security agreement. Cornett v. White Motor Corp., 190 Neb. 496, 209 N.W.2d 341 (1973).

Where secured party and cosigner of note failed after repossession of collateral to proceed in accordance with UCC provisions for disposition of collateral upon default, debtor was entitled to recover as damages value of security less debt. Farmers State Bank v. Otten, 87 S.D. 161, 204 N.W.2d 178 (1973).

There is nothing in UCC § 9-504 to prohibit a pledgee of promissory notes payable to the order of its own obligor from selling the notes should that obligor default, and the obligor does not have standing to complain if the purchaser is the original maker of the notes, since, regardless of who buys the notes, the original pledger loses his title to them and the right to receive payment thereon. Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972).

Where debtor did not own collateral but had only a security interest therein, lower court erred in awarding debtor full value of collateral where debtor was entitled to right to immediate possession and could maintain replevin action therefor. Brandywine Lanes, Inc. v. Pittsburgh Nat'l Bank, 220 Pa. Super. 363, 284 A.2d 802 (1971).

25. Burden of proof.

Although North Carolina UCC § 9-504(3) does not address the question of burden of proof, a creditor, when suing for a deficiency judgment, nevertheless has the burden of proving that the disposition of the collateral was conducted in a commercially reasonable manner. Likewise, in an action by a creditor to obtain a deficiency judgment, the burden of proving that notice was properly sent by the creditor to the debtor rests with the creditor. North Carolina Nat'l Bank v. Burnette, 297 N.C. 524, 256 S.E.2d 388 (1979).

Plaintiff bank, which made a corporate loan for the purchase of two mechanical devices used in the manufacture of elevator equipment, the loan being secured by a chattel mortgage on the purchased equipment, a contract of repurchase of the equipment by the seller of the equipment at a reduced purchase price and the personal guarantees of the three defendants who formed the corporation and were the sole stockholders, and which then, upon default and repossession of the equipment, did not seek to enforce the agreement of repurchase, but instead hired the seller of the equipment to act as its agent for the purpose of selling the repossessed equipment, which the seller purchased for itself at the foreclosure sale and then later resold at a profit, is not entitled to a deficiency judgment against defendants since plaintiff failed to sustain its burden of proof of "reasonable notification" of sale to the debtor corporation and that "the method, manner, time and terms" of the disposition were "commercially reasonable". (Uniform Commercial Code, § 9-504.) Although the mere fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a "commercially reasonable" manner, defined as the disposition of security "made in the good faith attempt to dispose of the collateral to the parties' mutual best advantage", where, however, marked discrepancies between the disposal and sale prices signal a need for closer scrutiny, especially where the possibility for self-dealing is substantial, the creditor should be denied a deficiency judgment in the absence of some affirmative showing that the terms of the disposition were in fact commercially reasonable. Since plaintiff offered no proof of the "fair value" of the security either at the time of repossession or sale, there is no need to determine if a creditor has the optional alternative of recovering a deficiency judgment "by proving the amount of the debt, the fair value of the security and the resulting deficiency". (See Security Trust Co. v. Thomas (1977, 4th Dist) 59 AD2d 242, 399 NYS2d 511, 22 UCCRS 1305.) Banker's Trust Co. v. Steenburn, 95 Misc. 2d 967 (1978), aff'd, 70 A.D.2d 786 (4 Dep't 1979).

The secured party has the burden of showing that the sale of repossessed collateral was commercially reasonable, as required by UCC § 9-504(3). This burden may not be satisfied without affirmatively establishing that the terms of the sale were commercially reasonable. This, in turn, requires the secured party to show that the sale price was the fair and reasonable value of the collateral. Vines v. Citizens Trust Bank, 146 Ga. App. 845, 247 S.E.2d 528 (1978).

In action for deficiency judgment, assignee of note and security agreement executed on sale of truck, which was repossessed on debtor's default and sold for $400 more than black-book listing therefor, sustained burden of proof that sale was commercially reasonable under UCC § 9-504(3) where agreed statement of parties recited that assignee had obtained fair price for vehicle at its sale following repossession. Jackson County State Bank v. Williams, 1 Kan. App. 2d 649, 573 P.2d 1092 (1977).

Duty of secured party in selling collateral under UCC § 9-504(3) is to obtain best possible price therefor for benefit of debtor. However, secured party does not have to use extraordinary means to accomplish this result, and ordinarily proof that price obtained was fair-market value of collateral will be sufficient. Mount Vernon Dodge, Inc. v. Seattle-First Nat'l Bank, 18 Wash. App. 569, 570 P.2d 702 (1977).

Secured party, who had burden under UCC § 9-504(3) of proving that every aspect of public sale of collateral after debtor's default was commercially reasonable, failed to meet such burden where (1) notice of sale listed property to be sold, but did not state where it could be inspected by prospective buyers; (2) such notice was published only by delivering copies thereof to General Services Administration and to clerks of state courts for posting, and was not published in any newspaper of general circulation in area where equipment was sold; (3) secured party did not solicit bids from any persons who would likely have been interested in buying the property, such as dealers, contractors, and oil companies; (4) secured party did not establish that sale was in conformity with reasonable commercial practices among dealers in that type of property; (5) secured party was only bidder at sale; (6) secured party purchased property for only $10,000, although it had sold such property to debtor 14 months before for more than $55,000; and (7) secured party six weeks later resold property to third person for $25,000. Kobuk Eng'g & Contracting Servs., Inc. v. Superior Tank Constr. Co.-Alaska, 568 P.2d 1007 (Alaska 1977).

Secured creditor who has liquidated his security may maintain action for deficiency judgment, but such secured creditor has burden to prove that due notice of sale as provided by law was given to debtor and that sale was commercially reasonable. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Because UCC definition of "commercially reasonable" sale is vague, and because reasonableness of sale of debtor's collateral generally depends on circumstances of each case, whether sale of collateral was held in commercially reasonably manner, as required by UCC § 9-504(3), is question of fact as to which secured creditor has burden of proof. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

Evidence raised sufficient question concerning notice of location of foreclosure sale and the sale's commercial reasonableness under UCC § 9-504 so as to warrant injunction to preserve status quo until resolution of issue at trial, where evidence indicated that notice of sale specified "door of the Courthouse" which was uniformly interpreted as meaning the south door, that no foreclosure sale had ever been conducted at any other courthouse door, that notice of sale was posted at the south door but not at the north door, that persons attempting to serve restraining order went to south door, but that sale was conducted at the north door. Jones v. Garcia, 538 S.W.2d 492 (Tex. Civ. App. 1976).

Creditor's default sale of tractor was not commercially reasonable as required by UCC § 9-504(3) where debtors had no notice other than posting of notice of sale at courthouse and where there was no evidence that tractor was sold in any recognized market for used tractors, that it was sold at price current on any such market, or that it was sold in conformity with reasonable commercial practices among tractor dealers; however, creditor was not absolutely barred from recovering deficiency judgment against debtor in any amount; rather debt was to be credited with amount that reasonably should have been obtained through sale conducted in reasonably commercial manner according to UCC and creditor's failure to dispose of collateral as required by Code raised presumption that collateral was worth at least amount of debt, which placed upon creditor burden of overcoming such presumption by proving market value of collateral by evidence other than resale price. Hodges v. Norton, 29 N.C. App. 193, 223 S.E.2d 848 (1976).

Under UCC §§ 9-504 and 9-507(2), where individual's guaranty of corporation's demand notes specifically authorized sale of collateral without notice to or further assent from guarantors, sale of collateral was approved by corporation's referree in bankruptcy and no objection was made by trustee in bankruptcy or guarantor at time of sale, naked assertion of impropriety in sale could not overcome presumption that sale of collateral was effectuated in commercially reasonable fashion. First Nat'l City Bank v. Cooper, 50 A.D.2d 518 (1st Dep't 1975).

Secured party failed to sustain its burden of proving that disposition of collateral was commercially reasonable, as required by UCC § 9-504(3), where it sold repossessed automobile, which had been purchased for over $1600 some three months earlier, for $300 at auction sale which had been advertised once, and where possibilities for self-dealing were substantial; thus, secured party was barred from recovering deficiency under UCC § 9-504(2). Central Budget Corp. v. Garrett, 48 A.D.2d 825 (2d Dep't 1975).

Commercial reasonableness of sale is conclusively presumed if secured party substantially complies with part 6 of Article 9 of North Carolina's UCC. Graham v. Northwestern Bank, 16 N.C. App. 287, 192 S.E.2d 109 (1972), cert. denied, 282 N.C. 426, 192 S.E.2d 836 (1972).

When reasonableness of sale is challenged the plaintiff has the burden of proof respecting such issue. Dynalectron Corp. v. Jack Richards Aircraft Co., 337 F. Supp. 659 (W.D. Okla. 1972).

Creditor, in action for deficiency judgment after sale of accounts given as security, failed to prove commercial reasonableness of sale; held, burden of proof on issue having been placed on debtor, creditor could not further litigate issue. Investors Acceptance Co. v. James Talcott, Inc., 61 Tenn. App. 307, 454 S.W.2d 130 (1969).

C. Notice.

26. In general; scope.

While § 75-9-504 does not require actual notice, but only reasonable notice, a creditor has a duty to make an additional good faith effort to notify the debtor where the creditor knows that the debtor has not received notice. Fidelity Fin. Servs., Inc. v. Stewart, 608 So. 2d 1111 (Miss. 1992), on rehearing, (Miss. 1992).

Creditor's notice of public sale of collateral was sufficient under UCC § 9-504(3) to inform reasonable business persons of place of sale where (1) such notice was sent to debtor's office in Dallas, Texas; (2) creditor's attorney, who signed notice, gave Houston, Texas address and phone number; (3) address of place of sale was given as "11601 North Houston-Rosslyn Road," although name of city (Houston) in which sale was to take place was not given; (4) name of owner of property to be sold was listed on notice as "Compression, Inc. of Houston, Texas"; and with owner of place in Houston, Texas where sale was conducted and thus had not been misled by failure of notice to state that place of sale was located in Houston, (5) that property had been brought to Houston, where demand for it was greatest, (6) that creditor had obtained property for $100,000 and had later resold it for the same price, (7) that property's subsequent purchaser had refabricated it at some expense and ultimately had obtained only $140,000 for it, (8) that demand at time of sale for that type of property was not great, and (9) that property's fair-market value ($150,000) did not render its sale price ($100,000) grossly inadequate. Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4 (Tex. Civ. App. 1978), ref. n.r.e (Dec. 6, 1978).

Sale of collateral at public auction was void as to debtor where debtor received no notice thereof, as required by UCC § 9-504(3), and waiver of such notice was prohibited by UCC § 9-501(3)(b). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

UCC § 9-504(3) is not applicable to sale of collateral by receiver appointed by court of equity, in case where receiver failed to give debtor timely and proper notice of such sale, since sale was made under court order that the court subsequently confirmed. Sands v. Citizens & S. Nat'l Bank, 146 Ga. App. 853, 247 S.E.2d 544 (1978).

Sale of collateral was not commercially reasonable under UCC § 9-504(3) where secured creditor, after debtor's default and after giving debtor notice of intended sale of collateral, which sale was never consummated because bids received were insufficient, sold collateral at second sale but failed to give debtor notice of second sale, as required by UCC § 9-504(3). Savings Bank v. Booze, 34 Conn. Supp. 632, 382 A.2d 226 (1977).

Holder of security interest in both real and personal property who chose upon debtors' default to proceed under UCC § 9-504(1) by repossessing and selling inventory without judicial process was bound by UCC § 9-504(3) requirement that notice of sale be given. Hildner v. Fox, 17 Ill. App. 3d 97, 308 N.E.2d 301 (1st Dist. 1974).

Failure to give notice as required by paragraph (3) of this section does not bar the plaintiff from recovery. Abbott Motors, Inc. v. Ralston, 28 Mass. App. Dec. 35 (1964).

27. Timeliness.

Where secured party mailed notice to debtor on Wednesday of intention to dispose of collateral by private sale the following Monday, such notice was not commercially reasonable under UCC § 9-504(3) as it did not provide debtor minimum of three business days to arrange to protect interest in collateral. First Nat'l Bank v. Rose, 197 Neb. 392, 249 N.W.2d 723 (1977). But see Old Mill Toyota, Inc. v. Schroder, 3 N.C.A. 953 (Neb. App. 1993).

Secured party failed to give reasonable notice of sale of repossessed mobile home, where notice of private sale to be held on April 10 was mailed to debtor on April 7 and received by him on April 8, and April 9 was holiday. Prairie Vista, Inc. v. Casella, 12 Ill. App. 3d 34, 297 N.E.2d 385 (4th Dist. 1973).

28. Manner of method.

Under UCC § 9-504(3), requiring that notice of intended sale of collateral must be "sent" to debtor, and § 1-201(38), defining word "send," notification of the sale must be in writing. Such written notice will be sufficient under UCC § 9-504(3) if it is either personally delivered to the debtor or sent by mail to the debtor's address. In the latter case, whether or not the debtor receives it will not defeat its sufficiency. McKee v. Mississippi Bank & Trust Co., 366 So. 2d 234 (Miss. 1979).

Where secured party's notice of public sale of automobile (the collateral) was posted on two utility poles in two alleys, and also on side of building but nowhere else, manner in which secured creditor gave notice to public of impending "public sale" of vehicle was so woefully inadequate that it, as matter of law, was not commercially reasonable under UCC § 9-504(3). Wilkerson Motor Co. v. Johnson, 580 P.2d 505 (Okla. 1978).

Under UCC § 9-504(3), requiring that reasonable notification of time and place of any public sale of collateral must be sent by secured party to debtor, while word "sent" implies notice sent by mail, all that it actually requires is actual or constructive receipt of notice. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Local newspaper publication a week before sale, with copy of publication being mailed to defendant the day after publication, constituted reasonable notification of sale within UCC § 9-504(3), even though defendant twice refused delivery of mailed notice. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

UCC § 9-504(3) requires more than a general advertisement or a reasonable expectation on the part of the debtor if the notice requirement is to be satisfied. People v. Brown, 131 Ill. App. 2d 717, 263 N.E.2d 603 (3d Dist. 1970).

Although only reasonable notification of the time after which a private sale will be made is required, oral notice of a sale to the highest bidder without the specification of any time cannot be said to constitute reasonable notice. Barker v. Horn, 245 Ark. 315, 432 S.W.2d 21 (1968).

The Code is silent as to the form of the notice of foreclosure of the collateral and does not state that it must be in writing, or whether it should be given by hand or by registered mail. Third Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

29. —Mailing.

Where secured party mailed notice to debtor on Wednesday of intention to dispose of collateral by private sale the following Monday, such notice was not commercially reasonable under UCC § 9-504(3) as it did not provide debtor minimum of three business days to arrange to protect interest in collateral. First Nat'l Bank v. Rose, 197 Neb. 392, 249 N.W.2d 723 (1977). But see Old Mill Toyota, Inc. v. Schroder, 3 N.C.A. 953 (Neb. App. 1993).

Bank dealt with collateral securing promissory note in commercially reasonable manner, where, after defendant had paid only five monthly installments on note, bank sent notice, which met requirements of UCC § 9-504(3), to defendant by registered mail stating that collateral would be sold at public sale, and thereafter proceeded with commercially reasonable public sale. Bank of Josephine v. Hopson, 516 S.W.2d 339 (Ky. 1974).

Conditional seller's notification by certified mail to buyer or his intention to resell repossessed truck was sufficient, and fact that buyer had no actual knowledge of resale is immaterial. Hudspeth Motors, Inc. v. Wilkinson, 238 Ark. 410, 382 S.W.2d 191 (1964), but see, Stimson Tractor Co. v. Heflin, 257 Ark. 263, 516 S.W.2d 379 (1974).

Assignee of security agreement covering conditional sale of auto used certified mail, return receipt requested, to give maker of agreement notice of impending sale; held, this was reasonable notice, notwithstanding maker's testimony disclaiming receipt or knowledge of notice. Steelman v. Associates Disct. Corp., 121 Ga. App. 649, 175 S.E.2d 62 (1970).

30. —Mailing; undelivered or unclaimed.

Secured party did not satisfy notice requirements of California version of UCC § 9-504(3), and was therefore precluded from recovering deficiency judgment from debtor, where secured party mailed certified letter addressed to debtor, return receipt requested, where notice was returned unclaimed before sale, and where secured party made no further attempt to notify debtor, although its officers knew his whereabouts and had business dealings with him through branch office. In re Carter, 511 F.2d 1203 (9th Cir. Cal. 1975).

Where (1) secured party, on debtor's default in making payments on car, obtained document from debtor in which debtor waived notice of secured party's intended sale of car, (2) secured party, on October 12, 1976, sent letter to debtor by certified mail advising debtor that he could redeem car before such sale, (3) on learning that letter had not been received by debtor, secured party sent debtor second letter on October 19, 1976, which justified debtor's belief that he had until October 29, 1976 to redeem car, and (4) secured party sold car on October 25, 1976, court held (1) that UCC § 9-501(3)(b) prohibited waiver of notice to debtor, which is required by UCC § 9-504(3), of intended sale of car, (2) that even if it could be assumed, despite prohibition contained in UCC § 9-501(3)(b), that debtor had waived his right to such notice, secured party's attempted sending of notice to debtor by certified mail on October 12, 1976 operated as an abandonment of such waiver, (3) that such abandonment was reinforced by secured party's second notice to debtor on October 19, 1976, and (4) that debtor had right to rely on statements in second notice that he could redeem car until October 29, 1976. McKee v. Mississippi Bank & Trust Co., 366 So. 2d 234 (Miss. 1979).

Where (1) after lessee's default, lessor repossessed collateral (leased forklift) and pursuant to UCC § 9-504(3) sent debtor certified letter of notice to address listed on leasing agreement that collateral would be sold, and (2) such letter was marked "unclaimed" and returned to leasor, lessee in action for deficiency judgment after sale of collateral could not successfully contend, in light of UCC § 1-201(26) concerning what constitutes giving of notice and § 1-201(38) concerning sending notice by mail, that lessee was required to receive such notice, and that if it did not receive it, no deficiency judgment could be awarded. MFT Leasing v. Fillmore Prods., Inc., 579 P.2d 924 (1978).

Sufficient notice of private sale of collateral is given under UCC § 9-504(3) when creditor takes such steps as are reasonably required to inform debtor in ordinary course, whether or not debtor actually receives such notice. Lloyd's Plan, Inc. v. Brown, 268 N.W.2d 192 (Iowa 1978).

Evidence failed to determine with certainty that reasonable notification required by UCC § 9-504(3) of sale of collateral was given to debtor where creditor testified that notice allegedly given was contained in letter sent by certified mail that was returned unclaimed, debtor testified that he did not receive such letter, and evidence did not show whether letter was returned before or after sale. Citizen & S. Nat'l Bank v. Morgan, 142 Ga. App. 337, 235 S.E.2d 767 (1977).

In suit for deficiency judgment against purchaser of boat and trailer who defaulted in making payment under retail instalment contract reserving security interest in seller, seller was not entitled to summary judgment where notice of private sale of security was sent to debtor by registered mail and was returned "unclaimed," because debtor is entitled to "reasonable notification" under UCC § 9-504(3) to protect his interests at sale or to redeem under UCC § 9-506 prior to sale; duty of good faith imposed under UCC § 1-203 and defined by UCC § 1-201(19) was not satisfied where notice was sent under UCC § 1-201(38) almost 4 months before sale was held and secured creditor was not entitled to summary judgment without showing of whether notice was returned prior to or after sale. Geohagan v. Commercial Credit Corp., 130 Ga. App. 828, 204 S.E.2d 784 (1974).

Where finance company's registered letter addressed to conditional buyer which purported to give notice of the time, place, and terms of sale of repossessed automobile was returned undelivered, and finance company made no further effort to give the notice required by subsection (3) although it had information as to where the buyer's parents lived and where he was employed, the provisions of the subsection with respect to notice were not complied with, and the sale of the automobile was commercially unreasonable. Mallicoat v. Volunteer Fin. & Loan Corp., 57 Tenn. App. 106, 415 S.W.2d 347 (1966).

31. Form.

The Code is silent as to the form of the notice of foreclosure of the collateral, and does not state that it must be in writing. Third Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

32. Sufficiency.

Where (1) certified letters were mailed to debtor and each guarantor advising them that collateral had been repossessed, that they had right of redemption, and that if such right were not exercised by specified date, collateral would be sold, and (2) where such letters were followed by other letters informing debtor and guarantors that collateral had been advertised for sale, court held that such notice of sale of collateral was commercially reasonable and sufficient under UCC § 9-504(3) and UCC § 1-201(26). Cessna Fin. Corp. v. Meyer, 575 P.2d 1048 (Utah 1978).

Jury finding that creditor had conducted public sale of collateral in commercially reasonable manner required by UCC § 9-504(3) was supported by evidence which showed (1) that creditor had advertised sale for two days in Houston, Texas daily newspaper, (2) that it had mailed notices to 19 used-equipment companies, (3) that prospective purchaser from Oklahoma City, Oklahoma, who received one of the mailed notices, had come to Houston and inspected the property, (4) that all but two of the used-equipment companies notified by the creditor had done business (5) debtor produced no evidence that it did not understand or could not deduce place of sale from notice and also failed to show that it had been prejudiced by omission of "Houston, Texas" from address of place of sale. Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4 (Tex. Civ. App. 1978), ref. n.r.e (Dec. 6, 1978).

Notice to debtor of secured party's proposed disposition of collateral is sufficient under UCC § 9-504(3) where (1) secured party notified debtor that pursuant to UCC § 9-504 and § 9-506, secured party would sell collateral within ten days; (2) such notice also informed debtor about manner of sale, distribution of sales proceeds, and accounting to debtor for any surplus or the seeking of any deficiency; and (3) notice granted debtor ten days to redeem collateral by satisfying indebtedness defaulted on. Georgia Grain & Stillage Co. v. First Ga. Bank, 142 Ga. App. 709, 236 S.E.2d 913 (1977).

33. —Public sale.

Where (1) creditor, after debtor's default in making payments on two trucks, sent debtor notice in April, 1975 that trucks would be sold at private sale after time specified in May, 1975, (2) trucks were sold at time specified in such notice, but sale was public and not private, (3) creditor purchased trucks at such sale for amount equal to expenses of conducting sale, and (4) creditor, nine months later, sold trucks at private sale and sued debtor for deficiency judgment for unpaid balance due on trucks, court held (1) that first sale of trucks, which was public sale, was invalid under UCC § 9-504(3) because notice thereof did not specify time and place of sale, (2) second sale of trucks nine months later at private sale was valid because notice thereof, which had been sent to debtor in April, 1975, constituted reasonable notification under UCC § 9-504(3), provided that test of commercial reasonableness of such sale could be met, and (3) even if at trial of case it should be found that creditor had not conducted sale in commercially reasonable manner, creditor was not thereby deprived of right to deficiency judgment, since debtor under UCC § 9-507(1) could offset any loss sustained as result of creditor's failure to conduct sale in commercially reasonable manner against any deficiency judgment that creditor might obtain. Associates Fin. Servs. Co. v. DiMarco, 383 A.2d 296 (Del. Super. 1978).

In action by buyer for damages for wrongful sale of repossessed automobile against dealer who resold vehicle and bank which had security interest therein, where buyer requested bank employee, while employee was repossessing vehicle on June 9, 1975, to hold vehicle for ten days to allow buyer to redeem it, and employee agreed to such request and orally informed dealer of buyer's intention to redeem; where bank on June 9, 1975, notified buyer by letter that efforts to resell vehicle would commence on June 19, 1975, and would continue until it was resold; where such letter also notified buyer of his right to redeem vehicle before its resale, but did not indicate where resale would take place; and where buyer received such letter on June 14, 1975, which was date on which dealer resold vehicle to third person, (1) bank as secured party at time of default, repossession, and resale violated its duty under UCC § 9-504(3) to give buyer reasonable notice of time and place of such resale and thus could have been found by jury to be liable under UCC § 9-507(1) for not effecting "commercially reasonable" disposition of vehicle under UCC § 9-504(3); (2) bank also could have been found liable for violation of UCC § 9-506 for not permitting buyer to redeem vehicle; and (3) jury could further have found that connection existed between bank and dealer in their prior course of dealing and their conduct in present transaction which demonstrated community of action and interest that would render both liable to buyer, particularly in view of evidence sufficient to show that bank had adopted dealer's actions by accepting dealer's check, based on proceeds of resale, for full payment of balance owed by buyer on vehicle. Wells v. Central Bank, 347 So. 2d 114 (Ala. Civ. App. 1977).

34. —Private sale.

Where (1) creditor, after debtor's default in making payments on two trucks, sent debtor notice in April, 1975 that trucks would be sold at private sale after time specified in May, 1975, (2) trucks were sold at time specified in such notice, but sale was public and not private, (3) creditor purchased trucks at such sale for amount equal to expenses of conducting sale, and (4) creditor, nine months later, sold trucks at private sale and sued debtor for deficiency judgment for unpaid balance due on trucks, court held (1) that first sale of trucks, which was public sale, was invalid under UCC § 9-504(3) because notice thereof did not specify time and place of sale, (2) second sale of trucks nine months later at private sale was valid because notice thereof, which had been sent to debtor in April, 1975, constituted reasonable notification under UCC § 9-504(3), provided that test of commercial reasonableness of such sale could be met, and (3) even if at trial of case it should be found that creditor had not conducted sale in commercially reasonable manner, creditor was not thereby deprived of right to deficiency judgment, since debtor under UCC § 9-507(1) could offset any loss sustained as result of creditor's failure to conduct sale in commercially reasonable manner against any deficiency judgment that creditor might obtain. Associates Fin. Servs. Co. v. DiMarco, 383 A.2d 296 (Del. Super. 1978).

Where seller of automobile repossessed after buyer breached contract, repaired automobile and placed it on lot for sale in ordinary course of business as automobile dealer, such sale was a private one, and not one made at auction or by way of competitive bidding; thus, notice requirements of UCC § 9-504(3) were satisfied by notice to buyer of time after which collateral was to be sold. Contois Motor Co. v. Saltz, 198 Neb. 455, 253 N.W.2d 290 (1977).

In action by bank to recover balance due on promissory note signed by debtor to secure purchase of automobile, trial court erred in directing verdict for bank where bank admittedly did not comply with notice requirements of UCC § 9-504 in telling debtor only that car was to be sold at private sale without mention of specific date, and bank's assertion that debtor's statement that he knew car had been repossessed and debtor's surrender of keys to seller of automobile amounted to admission that debtor had notice that after that time car was subject to private sale did not justify court's ruling that debtor was estopped from asserting lack of notice where testimony conflicted as to whether debtor was told of sale and signed over title before or after sale occurred. Wheeless v. Eudora Bank, 256 Ark. 644, 509 S.W.2d 532 (1974).

35. —Actual notice.

In action to recover deficiency judgment for breach of retail instalment contract for purchase of second-hand front end loader, following resale of loader after buyer's default, where seller gave buyer oral notice of intention to place loader back on its lot and offer it for sale, and where buyer knew where loader was located, why it was being sold and had three months to find buyer or bid on it himself, buyer's actual knowledge of expected sale was sufficient to constitute reasonable notice under UCC § 9-504(3) as sale was private sale of collateral in normal course of seller's business. Bondurant v. Beard Equip. Co., 345 So. 2d 806 (Fla. App. 1977).

The receipt or acquisition of actual knowledge within the time a properly sent notification could have arrived amounts to compliance with the requirement of UCC § 9-504(3), even absent a writing. Crest Inv. Trust, Inc. v. Alatzas, 264 Md. 571, 287 A.2d 261 (1972).

Debtor's knowledge that repossessed auto would be sold to satisfy indebtedness did not constitute reasonable notification of time after which creditor could make private sale of auto. Nelson v. Monarch Inv. Plan, Inc., 452 S.W.2d 375 (Ky. 1970).

36. —Constructive notice.

The requirement that a guarantor of a secured party receive the same notice of sale of the collateral as the debtor is entitled to receive (Uniform Commercial Code, § 9-504, subd [3]), is satisfied, where the notice of the dispositional sale of the corporate debtor's assets can properly be imputed to defendant guarantor by reason of her position as the secretary of the small, closely owned and family-operated corporation whose indebtedness she guaranteed. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Notice to corporation president of private sale of repossessed equipment could not be imputed to corporate officers who were accommodation indorsers of note where president was also officer of repossessing equipment supplier, and where repossessor, although aware of this probability of conflict of interest, had not taken "such steps as may be reasonably required to inform the other party in the ordinary course". T & W Ice Cream, Inc. v. Carriage Barn, Inc., 107 N.J. Super. 328, 258 A.2d 162 (L. Div. 1969).

37. Parties entitled to notice.

An automobile dealer who sells a conditional sales contract to a bank and at the same time executes an assignment which provides that in the event of default he will repurchase the contract for the unpaid balance is a debtor of the bank as defined in ¶ (d) of subd (1) of § 9-105, and where the bank, after repossession, sells the security at private sale without notice to the dealer, subd (3) of this section is not complied with. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

Where (1) seller sold computer system under purchase agreement which provided that seller would retain security interest in goods until balance of purchase price was paid, (2) buyer, after taking possession of goods on January 14, 1975, advised seller on January 30, 1975 to repossess them for seller's protection because buyer was in financial difficulty, and (3) seller, after repossessing goods on February 3, 1975, subsequently returned part of them to seller's new-equipment inventory without separately identifying such goods from goods already in inventory and also, without notifying buyer, resold some of the repossessed goods to third persons, court held (1) that seller was limited to remedy of security-interest holder under UCC § 9-504, which governed seller's right to repossess the goods in suit, dispose of them, and apply their proceeds, and (2) that because seller, on reselling some of the goods after their repossession, had failed to give buyer notice of sale required by UCC § 9-504(3), seller under California construction of UCC § 9-504(3) could not recover deficiency on unpaid purchase price from buyer. Nixdorf Computer, Inc. v. Jet Forwarding, Inc., 579 F.2d 1175 (9th Cir. Cal. 1978).

Where bank loaned debtor money to buy airplanes and loans were secured by such airplanes, and where bank repossessed airplanes because of debtor's failure to make payment, sold them at private sale, and sued guarantors of loans for deficiency judgment under guaranty agreement which unambiguously contained waiver by guarantors that bank could sell or release collateral (airplanes) without notice to guarantors and without affecting their absolute liability, (1) policies underlying UCC § 9-504(3), requiring principal debtor to be given notice of creditor's sale of collateral, would be interpreted as giving guarantor defense to deficiency claim where secured party failed to give principal debtor statutory notice of such sale; (2) such defense was waived by defendant guarantors by express provision in guaranty agreement; and (3) such waiver of notice under UCC § 9-504(3) was not specifically barred by UCC § 9-501(3), since UCC § 9-501(3) applies only to debtors and does not by its terms mandate holding that guarantor is precluded by such section from waiving defense of lack of notice to debtor. First Nat'l Park Bank v. Johnson, 553 F.2d 599 (9th Cir. Mont. 1977).

Where assignee (secured party) of equipment lease of drilling machine, on default of colessees, repossessed machine and, without giving written notice of any public or private sale thereof to either colessees or lease's guarantors, sold machine more than one year after repossessing it, assignee was not entitled to deficiency judgment because of its failure to act in good faith and in commercially reasonable manner under UCC § 9-504(3). National Equip. Rental, Ltd. v. Holes, Inc., 460 F. Supp. 118 (C.D. Cal. 1978), aff'd, 642 F.2d 456 (9th Cir. Cal. 1981).

In action by debtor for creditor's wrongful repossession and conversion of collateral, evidence of value of collateral at time it was sold, where creditor did not give debtor notice of sale required by UCC § 9-504(3), was relevant because it went toward proof of conversion. Ott v. Fox, 362 So. 2d 836 (Ala. 1978).

Sale of collateral at public auction was void as to debtor where debtor received no notice thereof, as required by UCC § 9-504(3), and waiver of such notice was prohibited by UCC § 9-501(3)(b). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Automobile "lease agreement" was, in fact, secured transaction within meaning of Article 9 of Uniform Commercial Code where agreement was of indefinite duration and, at its inception, passed all risks and indicia of ownership of vehicle to purported lessee, in that lessee not only insured against any loss to leasing company of its capitalized cost, but after 26 months, was entitled to any surplus funds if and when car was sold, and where at end of 56 months, car would, at option of leasee, pass to her at no cost, since monthly installment payments would have equaled capitalized cost of vehicle. Right of debtor to receive notice of intended disposition of collateral after default may not be limited under UCC § 9-501(1), (3)(b), and inasmuch as leasing company failed to comply with notice provision of UCC § 9-504(3) before selling repossessed vehicle, it was precluded from recovering deficiency judgment and could only recover sums owed to it prior to repossession as well as repossession charges. Avis Rent-A-Car Sys. v. Franklin, 82 Misc. 2d 66 (1975).

Plaintiff was entitled to notification of public sale of collateral in which both plaintiff and bank had security interest, and bank was therefore liable for any damages which plaintiff sustained by bank's failure to provide such notice, where property described in plaintiff's financing statement reasonably identified collateral, and where such financing statement was therefore sufficient to put bank on notice of plaintiff's claim. Stephens v. Bank of Camilla, 133 Ga. App. 210, 210 S.E.2d 358 (1974), aff'd, 234 Ga. 293, 216 S.E.2d 71 (1975).

Where the corporate maker dishonors the note, a corporate officer who had signed as indorser becomes a debtor entitled to notice under UCC § 9-504. Third

Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

38. —Accommodation parties.

Although bank was permitted to dispose of repossessed automobile without judicial process or notice to co-signer of installment sales contract, bank was not entitled under UCC § 9-504(3) to deficiency judgment against co-signer, where bank failed to give notice to co-signer of intended sale of repossessed automobile. Washington v. First Nat'l Bank, 332 So. 2d 644 (Fla. App. 1976).

Secured party was not entitled to recover deficiency judgment from cosigner of note where collateral securing note was repossessed and sold without notice to cosigner. First State Bank v. Northrop, 519 S.W.2d 161 (Tex. Civ. App. 1975).

Secured creditor who took possession of collateral, solicited bids, and sold it at private sale was not entitled to recover deficiency judgment against accommodation maker of note where no notice of private sale was given to accommodation party prior to completion of sale as required by UCC § 9-504(3); accommodation maker who signed note to enable makers of note to secure loan from secured party was debtor within meaning of UCC § 9-504(3), and was, thus, entitled to notice of sale. Bank of Gering v. Glover, 192 Neb. 575, 223 N.W.2d 56 (1974).

Accommodation indorsers are "debtors", entitled to notice from secured party of private sale of ice cream business equipment which was collateral on promissory note. T & W Ice Cream, Inc. v. Carriage Barn, Inc., 107 N.J. Super. 328, 258 A.2d 162 (L. Div. 1969).

39. —Guarantor.

Where assignee (secured party) of equipment lease of drilling machine, on default of colessees, repossessed machine and, without giving written notice of any public or private sale thereof to either colessees or lease's guarantors, sold machine more than one year after repossessing it, assignee was not entitled to deficiency judgment because of its failure to act in good faith and in commercially reasonable manner under UCC § 9-504(3). National Equip. Rental, Ltd. v. Holes, Inc., 460 F. Supp. 118 (C.D. Cal. 1978), aff'd, 642 F.2d 456 (9th Cir. Cal. 1981).

In creditor's action against trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

Where bank upon default of note and commercial equipment security agreement sold collateral without giving notice to guarantors, under UCC § 9-504(3) failure of secured party to give requisite notice prior to sale or disposition of collateral precluded action for deficiency against guarantor. Barnett v. Barnett Bank, 345 So. 2d 804 (Fla. App. 1977), but see Ayares-Eisenberg Perrine Datsun v. Sun Bank, 455 So. 2d 525 (Fla. Ct. App. 1984).

A guarantor of payment of a secured party is entitled to the same notice of sale of the collateral as the debtor is entitled to (Uniform Commercial Code, § 9-504, subd [3]) since a guarantor is a "debtor" within the meaning of section 9-105 (subd [1], par [d]) of the Uniform Commercial Code which does not require the "debtor" to be the owner or have rights in the collateral. The debtor is only required to be an "obligor in any provision dealing with the obligation". It is imperative for the guarantor to receive notice of the dispositional sale in order to protect his right to reduce his potential liability at the sale. Requiring the secured party to give notice to the guarantor of the disposition of the collateral will not cause the creditor to suffer any prejudice or impose an undue burden. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Guarantor is "debtor" within meaning of UCC § 9-105(1)(d) and § 9-504(3), and thus is entitled to notice of disposition of collateral. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Although plaintiff was not guarantor of loan to corporation, having been released from personal liability on loan, where plaintiff's stock still secured corporate debt and, in event of deficiency, stock was subject to sale, plaintiff was "debtor" to whom notice was owed under UCC § 9-504(3); although creditor failed to give notice prior to sale of collateral, creditor was entitled to collect deficiency if he could prove market value of collateral. Rushton v. Shea, 423 F. Supp. 468 (D. Del. 1976).

Guarantors of promissory note secured by collateral were "debtors" within meaning of UCC §§ 9-105(1)(d) and 9-504(3) and were entitled to reasonable notification prior to disposition of collateral by secured party; failure to provide such notice precluded entry of deficiency judgment in action by secured party against guarantors. Hepworth v. Orlando Bank & Trust Co., 323 So. 2d 41 (Fla. App. 1975).

Lease of restaurant equipment did not constitute security agreement and, hence, guarantors of lessee's performance of terms of lease were not entitled to notice required by UCC § 9-504(3) where leased equipment was sold at private sale after lessee failed to pay rent and after demand for payment from guarantors had been ignored. Diaz v. Goodwin Bros. Leasing, Inc., 511 S.W.2d 680 (Ky. 1974).

40. —Owner of collateral.

In creditor's action against trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

Since UCC § 9-504(3), requiring secured party to send debtor reasonable notification of sale of collateral, deals with both collateral and the underlying obligation, term "debtor" in UCC § 9-504(3) includes both owner of collateral and obligor when they are not the same person. Commercial Disct. Corp. v. Bayer, 57 Ill. App. 3d 295, 372 N.E.2d 926, 5 A.L.R.4th 1283 (1st Dist. 1978).

Notice requirement of UCC § 9-504(3) refers to collateral, not to obligation, and "debtor" entitled to notice by that provision is owner of collateral; thus, maker of note was not entitled to notice of sale where automobile given as security for note was owned by his cosigner. New

Haven Water Co. Emp. Credit Union v. Burroughs, 6 Conn. Cir. Ct. 709, 313 A.2d 82 (1973).

41. —Waiver.

Where (1) plaintiff and his wife purchased used mobile home, (2) plaintiff's father-in-law cosigned security agreement and note as accommodation maker, (3) plaintiff defaulted on payments, (4) plaintiff's father-in-law, with secured party's consent, obtained possession of home, paid off balance due on note, and made repairs on home, (5) secured party obtained repossession title in its name, released security agreement, and transferred repossession title to plaintiff's father-in-law without notifying plaintiff, who was in jail, of either the account delinquency or the subsequent transfer of title, and (6) after plaintiff's release from jail, plaintiff's father-in-law sold home with plaintiff's consent, but did not give accounting of sale or proceeds therefrom to plaintiff, court held (1) that plaintiff did not waive right to notice of disposition of home under UCC § 9-504(3), since UCC § 9-501(3)(b) specifically states that such right cannot be waived; (2) plaintiff's father-in-law, as accommodation maker of note, did not fall within scope of UCC § 9-504(5), dealing with transfers of collateral that are not sales and thus do not require notice to debtor; (3) UCC § 9-504(5) did not contemplate complete extinguishment of plaintiff's right to home, as was done in present case by secured party's transfer of repossession title to plaintiff's father-in-law; and (4) under UCC § 9-507(1) and UCC § 1-103, plaintiff was entitled to damages for conversion of home on basis of benefit to defendant wrongdoers, rather than on basis of allowing full value of home as enhanced by wrongdoers. Western Nat'l Bank v. Harrison, 577 P.2d 635 (Wyo. 1978).

Sale of collateral at public auction was void as to debtor where debtor received no notice thereof, as required by UCC § 9-504(3), and waiver of such notice was prohibited by UCC § 9-501(3)(b). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Loan contract which contained provision for waiver of notice of sale of repossessed collateral in violation of UCC § 9-501(3)(b) and § 9-504(3) was not completely void, but merely contained unenforceable provision, where defendant lender did not foreclose on or sell any property of plaintiff debtor and waiver provision was not in any way involved in the litigation between the parties. Lowe v. Termplan, Inc., 144 Ga. App. 671, 242 S.E.2d 268 (1978).

Where bank loaned debtor money to buy airplanes and loans were secured by such airplanes, and where bank repossessed airplanes because of debtor's failure to make payment, sold them at private sale, and sued guarantors of loans for deficiency judgment under guaranty agreement which unambiguously contained waiver by guarantors that bank could sell or release collateral (airplanes) without notice to guarantors and without affecting their absolute liability, (1) policies underlying UCC § 9-504(3), requiring principal debtor to be given notice of creditor's sale of collateral, would be interpreted as giving guarantor defense to deficiency claim where secured party failed to give principal debtor statutory notice of such sale; (2) such defense was waived by defendant guarantors by express provision in guaranty agreement; and (3) such waiver of notice under UCC § 9-504(3) was not specifically barred by UCC § 9-501(3), since UCC § 9-501(3) applies only to debtors and does not by its terms mandate holding that guarantor is precluded by such section from waiving defense of lack of notice to debtor. First Nat'l Park Bank v. Johnson, 553 F.2d 599 (9th Cir. Mont. 1977).

Proper interpretation of UCC § 9-501(3)(b), which is in accordance with policy of UCC § 9-504 to protect rights of debtor, is that nonwaiver provision of UCC § 9-501(3) applies both before and after debtor's default. Thus, UCC § 9-501(3)(b) does not allow waiver by debtor of his right under UCC § 9-504(3) to reasonable notification of private sale of collateral after debtor's default on underlying obligation. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

Foreclosure sale of Mack trucks did not come within notification exception of UCC § 9-504 as to goods of type customarily sold on "recognized market"; recognized market within meaning of UCC is most restrictive and might well be stock market or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where prices paid in actual sales of comparable property are currently available by quotation. Furthermore, debtor did not waive right to notice of private sale by requesting creditor to repossess trucks to stop interest accruing on notes; under UCC §§ 9-501 and 9-504 waiver will be permitted only if debtor signs statement after default renouncing or modifying his right to notification of sale. O'Neil v. Mack Trucks, Inc., 533 S.W.2d 832 (Tex. Civ. App. 1975), rev'd, 542 S.W.2d 112 (Tex. 1976), mandate recalled and reissued, 551 S.W.2d 32 (Tex. 1977).

Under UCC §§ 9-504 and 9-507(2), where individual's guaranty of corporation's demand notes specifically authorized sale of collateral without notice to or further assent from guarantors, sale of collateral was approved by corporation's referee in bankruptcy and no objection was made by trustee in bankruptcy or guarantor at time of sale, naked assertion of impropriety in sale could not overcome presumption that sale of collateral was effectuated in commercially reasonable fashion. First Nat'l City Bank v. Cooper, 50 A.D.2d 518 (1st Dep't 1975).

42. Exceptions to notice requirement.

Code section requiring secured party to give reasonable notification to debtor of its intention to dispose collateral is made inoperative by Code § 9-501(4) with respect to watered stock foreclosed as part of real estate security. Kinoshita v. North Denver Bank, 181 Colo. 183, 508 P.2d 1264 (1973).

Forty-one head of cattle were not "perishable" or did not threaten to "decline speedily in value" within two weeks from date at which sale was scheduled until date sale was held, so as to excuse "reasona le notification" to junior lienholder as to time and place of sale as required by UCC § 9-504(3). United States v. Mid-States Sales Co., 336 F. Supp. 1099 (D. Neb. 1971).

Failure to give notice to conditional buyer as required by paragraph (3) of this section was not excused in the absence of evidence that a repossessed second-hand pickup truck would threaten to decline speedily in value or was a type of property customarily sold on a recognized market. Abbott Motors, Inc. v. Ralston, 28 Mass. App. Dec. 35 (1964).

43. —Sale on recognized market.

Bank which as secured creditor purchased collateral at private sale following debtor's default, but which did not comply with requirement of UCC § 9-504(3) that collateral purchased at private sale must be of type that is customarily sold in recognized market or is subject of widely distributed standard-price quotations, was not entitled to recover deficiency that existed after liquidation of collateral. Jackson State Bank v. Beck, 577 P.2d 168 (Wyo. 1978).

Creditor's default sale of tractor was not commercially reasonable as required by UCC § 9-504(3) where debtors had no notice other than posting of notice of sale at courthouse and where there was no evidence that tractor was sold in any recognized market for used tractors, that it was sold at price current on any such market, or that it was sold in conformity with reasonable commercial practices among tractor dealers; however, creditor was not absolutely barred from recovering deficiency judgment against debtor in any amount; rather debt was to be credited with amount that reasonably should have been obtained through sale conducted in reasonably commercial manner according to UCC and creditor's failure to dispose of collateral as required by Code raised presumption that collateral was worth at least amount of debt, which placed upon creditor burden of overcoming such presumption by proving market value of collateral by evidence other than resale price. Hodges v. Norton, 29 N.C. App. 193, 223 S.E.2d 848 (1976).

Foreclosure sale of Mack trucks did not come within notification exception of UCC § 9-504 as to goods of type customarily sold on "recognized market"; recognized market within meaning of UCC is most restrictive and might well be stock market or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where prices paid in actual sales of comparable property are currently available by quotation. Furthermore, debtor did not waive right to notice of private sale by requesting creditor to repossess trucks to stop interest accruing on notes; under UCC §§ 9-501 and 9-504 waiver will be permitted only if debtor signs statement after default renouncing or modifying his right to notification of sale. O'Neil v. Mack Trucks, Inc., 533 S.W.2d 832 (Tex. Civ. App. 1975), rev'd, 542 S.W.2d 112 (Tex. 1976), mandate recalled and reissued, 551 S.W.2d 32 (Tex. 1977).

Repossessed automobiles are not collateral of type sold on recognized market within meaning of UCC provision requiring creditor to give debtor notice of sale of repossessed collateral. Community Mgt. Ass'n v. Tousley, 32 Colo. App. 33, 505 P.2d 1314 (1973).

A used automobile is not collateral of a type customarily sold on a recognized market, and where it is sold by the holder of a security interest, notice to the debtor is not dispensed with. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

The debtor is not entitled to notice of the foreclosure sale of the collateral where it is of a nature customarily sold on a recognized market. Third Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

44. —"Recognized market".

A "recognized market," as the term is used in subdivision (3) of this section might well be a stock or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where the prices paid in actual sales of comparable property are currently available by quotation; and notice to the debtor of such sales is dispensed with only because the debtor would not be prejudiced by the want of notice. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

"Recognized market" refers to widely recognized stock and commodity exchanges which are regulated in some substantial way, but does not include automobile auctions; so that in absence of secured creditor's giving required notice of sale of repossessed automobile, creditor forfeits his right to any deficiency against any debtor not so notified. Turk v. St. Petersburg Bank & Trust Co., 281 So. 2d 534 (Fla. App. 1973).

45. Evidence of burden of proof.

Although North Carolina UCC § 9-504(3) does not address the question of burden of proof, a creditor, when suing for a deficiency judgment, nevertheless has the burden of proving that the disposition of the collateral was conducted in a commercially reasonable manner. Likewise, in an action by a creditor to obtain a deficiency judgment, the burden of proving that notice was properly sent by the creditor to the debtor rests with the creditor. North Carolina Nat'l Bank v. Burnette, 297 N.C. 524, 256 S.E.2d 388 (1979).

Although secured party under UCC § 9-504(3) need not prove debtor's receipt of notice of sale of collateral, secured party must show when notice was sent in order to permit determination to be made as to whether notice was sent within commercially reasonable time prior to date after which private sale of collateral would be made. Commercial Disct. Corp. v. Bayer, 57 Ill. App. 3d 295, 372 N.E.2d 926, 5 A.L.R.4th 1283 (1st Dist. 1978).

Secured creditor who has liquidated his security may maintain action for deficiency judgment, but such secured creditor has burden to prove that due notice of sale as provided by law was given to debtor and that sale was commercially reasonable. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

In action brought by secured creditor against maker and guarantor of note to recover deficiency alleged to be due on note after secured creditor sold collateral, summary judgment in favor of secured creditor was precluded by existence of factual issues concerning propriety of notice of sale and whether sale was conducted in commercially reasonable manner. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Secured party who (1) pursuant to UCC § 9-504(1) sold collateral (truck tractor) at private sale for $1,000, although debtor had borrowed $25,000 from secured party to buy collateral, (2) did not give debtor notice of sale required by UCC § 9-504(3), and (3) allegedly violated UCC § 9-504(3) by conducting sale in commercially unreasonable manner could maintain action against debtor and guarantor of debtor's note for deficiency judgment on debtor's obligation. However, in such case, secured party had burden of proving that due notice of sale had been given to debtor and that sale had been conducted in commercially reasonable manner. Furthermore, even if secured party should fail to present such proof at the trial, he could still recover deficiency judgment by proving amount of debt, fair value of collateral, and resulting deficiency. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Compliance with UCC § 9-504(3) for notification as to disposition of collateral security is condition precedent to secured creditor's right to recovery under UCC § 9-507(1) of any deficiency between sale price of collateral and amount of unpaid balance; burden is on secured party to plead and prove compliance with statutory requirement of notice and of reasonableness of notice. Herman Ford-Mercury, Inc. v. Betts, 251 N.W.2d 492 (Iowa 1977).

Secured parties failed to meet burden of proving compliance with "reasonable notification" requirement of UCC § 9-504(3) where secured parties sent notice of sale only to one out of two debtors by letter, on May 25, 1972, informing him that sale would be held on June 2, 1972, and where, before sale date, debtors moved to temporarily restrain sale to protect their interest in collateral, but secured parties conducted sale before court's order could be served. Furthermore, sale was not commercially reasonable where only people who attended sale were secured party and one of his former employees, where there was no evidence that secured parties publicized sale in any manner or otherwise took steps to insure best price possible would be obtained for benefit of debtor, secured party placed only bid at sale and purchased collateral for $100, and where, subsequently, secured parties sold collateral to third party for $10,000. Although it would be presumed that collateral had fair market value equal to amount of debt and no deficiency would be permitted unless creditor produced evidence to establish reasonable amount that collateral would have sold for at proper sale, and although secured parties had failed to conduct commercially reasonably sale with reasonable notification to debtors, there was substantial evidence that collateral had fair market value of $10,000 and, thus, secured parties were entitled to deficiency judgment in amount equal to difference between balance owed on promissory note and fair market value of collateral. Levers v. Rio King Land & Inv. Co., 93 Nev. 95, 560 P.2d 917 (1977).

In action by noteholder for deficiency after sale of collateral, noteholder had burden of proving defendant was given proper notice of sale within meaning of UCC § 9-504(3). Notice was misleading, inaccurate and unreasonable where automobile being sold was not present, where defendant was not given opportunity to bid, where no other potential purchasers were present, where alleged "public sale" was held in Chicago law office while collateral was located in another city, and where bids were received at undisclosed price from undisclosed persons. General Foods Corp. v. Hall, 39 Ill. App. 3d 147, 349 N.E.2d 573 (1st Dist. 1976).

In action to recover deficiency judgment from debtor and guarantor after sale of property taken by bank under security instruments, where bank disposed of property in several transactions and in some of transactions failed to give notice of sale as required by UCC § 9-504(3) and in others failed to prove reasonableness of notice, i.e., notice should be sent in such time that debtors would have minimum of three business days to arrange to protect interests, failure to give notice barred recovery of deficiency judgment. DeLay First Nat'l Bank & Trust Co. v. Jacobson Appliance Co., 196 Neb. 398, 243 N.W.2d

745 (1976). But see Howard Kool Chevrolet v. Blomstedt, 2 Neb. App. 493, 511 N.W.2d 222 (1994).

Evidence was insufficient to support finding that secured party resold automobile in violation of notice requirement of UCC § 9-504(3) where sale was actually conducted by repairman having garageman's possessory repair lien on vehicle in question, which was superior to secured party's perfected security interest under UCC § 9-310, and where evidence failed to show that repairman sold vehicle in concert with or as agent for secured party. Magnavox Ft. Wayne Employees Credit Union v. Benson, 165 Ind. App. 155, 331 N.E.2d 46 (1975).

Judgment in favor of secured creditor for reimbursement of fuel taxes paid to state board of equalization in order to obtain clear title to repossessed trucks before they were sold in satisfaction of debtor's defaulted obligation, was deficiency judgment, since taxes should have been paid out of proceeds of sale before satisfaction of debtor's underlying indebtedness. Accordingly, such judgment required reversal where creditor did not comply with requirements of UCC § 9-504(3), concerning notice of sale, in that notice to debtor did not explicitly set forth exact date, time, and place of sale, but only informed debtor that collateral would be sold at end of seven days from date of letter to debtor and could be inspected at creditor's premises, where no public sale in terms of auction was in fact conducted, and where, even if creditor had complied with notice requirements, it failed to allege or prove such compliance in its complaint. J.T. Jenkins Co. v. Kennedy, 45 Cal. App. 3d 474 (2d Dist. 1975).

Although Code does not require that secured party prove actual receipt of letter notifying debtor of sale, where secured party proved only that envelope had been sent, by introducing certified mail return receipt, and utterly failed to present any evidence as to contents of envelope, he failed to sustain his burden of proving compliance with requirements for notice of disposition. Tauber v. Johnson, 8 Ill. App. 3d 789, 291 N.E.2d 180 (1st Dist. 1972), overruled on other grounds, State Nat'l Bank v. Norwest Dodge, Inc., 108 Ill. App. 3d 376, 64 Ill. Dec. 26, 438 N.E.2d 1345 (1st Dist. 1982).

Conclusory statement that notice "went out in the normal course of business in my office as all mail does each day" is insufficient to prove "reasonable notice" under UCC § 9-504(3) without proof of customary office practice as to stamping, addressing, and posting. Leasing Assocs. v. Slaughter & Son, 450 F.2d 174 (8th Cir. Ark. 1971).

D. Application of Proceeds.

46. In general; creditor's expenses and attorney's fees.

Under Uniform Commercial Code Article 9, a security agreement may impose various charges that are not contained in the promissory note, with respect to which the security agreement was made, in the event of the debtor's default on the note. For example, under UCC § 9-504(1)(a) and § 9-506, the security agreement may provide for the debtor's payment, in the event of default, of the legal expenses and charges for repossession, storage, and redemption of the collateral. Furthermore, a valid acceleration clause in the security agreement can establish, in the event of default, a legal basis for collection from the debtor of both principal and accrued interest on the note. General Fin. Corp. v. Sprouse, 577 F.2d 989 (5th Cir. 1978).

A liquidated damage provision in a financing agreement providing that "reasonable attorneys' fees" of 15% of the unpaid balance due are payable upon the acceleration of the entire indebtedness due to the assignor's filing an assignment for the benefit of creditors, is subject to judicial review and modification under the court's inherent right to supervise the charging of fees for legal services as part of the State's strong public policy against the imposition of penalties in the private sector and its duty to protect "all creditors" from any possible mistake or possible overreaching. Courts will not enforce a liquidated damage provision which fixes damages in an amount "grossly disproportionate" to the harm actually or likely to be sustained by the nonbreaching party. The fixed percentage "attorneys' fee" is only a "maximum fee" which the creditor may charge only upon first proving the extent of the necessary legal services "actually rendered". Coastline Steel Prods., Inc. v. Goldhaber, 93 Misc. 2d 255 (1978).

Where security agreement provided that on debtor's default, creditor could retain counsel to protect its interest and collect balance due, and that debtor would pay reasonable counsel fees in amount of 15% of such unpaid balance, court had power to order special hearing (1) to ascertain amount of fees received by creditor's attorneys, and (2) to determine whether such amount was reasonable under UCC § 9-504(1)(a). Coastline Steel Prods., Inc. v. Goldhaber, 93 Misc. 2d 255 (1978).

UCC § 9-504(1)(a) relates to expenses, including attorney's fees, of liquidating the collateral and does not authorize award of reasonable attorney's fees for expenses incurred in bringing suit on a collateral promissory note. Kohlenberg v. American Plumbing Supply Co., 82 Wis. 2d 384, 263 N.W.2d 496 (1978).

Reference to attorneys' fees in UCC §§ 9-504(1)(a) is only to permit recovery where state law recognizes recovery and was not intended to change Nebraska law that attorneys' fees will be permitted only where state legislature has expressly provided by statute that award of such fees may be made by court; thus, the secured party was not entitled to retain attorneys' fees from proceeds of sale of collateral as provided in security agreement. Northwestern Nat'l Bank v. American Beef Packers, Inc., 548 F.2d 246 (8th Cir. Neb. 1977).

In action to recover on unpaid promissory notes secured by mortgage on realty, provision in both notes and mortgage that debtor agreed to pay reasonable attorney's fees arising from default was unenforceable on public policy grounds under well-established rule of Kentucky case law; and such rule was not changed by Kentucky version of UCC § 3-106(1)(e), under which sum payable is "sum certain," even though it is to be paid with costs of collection, or attorney's fee not exceeding 15 percent of amount owing, or $500, whichever is smaller, since such statute means only that attorney's fee greater than that allowed by the statute would render instrument indefinite, and therefore nonnegotiable, for failure to contain sum certain. Nor was such provision in notes and mortgage rendered enforceable by UCC § 9-504(1)(a), dealing with secured party's right to dispose of collateral and apply proceeds to, among other things, "reasonable attorney's fees" incurred by secured party, since UCC § 9-504(1)(a) applies only to personalty that is used as collateral, and in present case collateral consisted of realty. Mammoth Cave Prod. Credit Ass'n v. Geralds, 551 S.W.2d 5 (Ky. Ct. App. 1977).

Assignee of note and security agreement covering certain equipment did not have right to deduct from proceeds of sale of equipment following its repossession, expenses and attorney's fees incurred in connection with its repossession and sale under UCC § 9-504 since plaintiff, as assignee, acquired no greater rights against debtor than assignor had against him at time of assignment; assignor had no claim for expenses connected with repossession and sale, or attorney's fees for such purposes, since such expenses were all incurred by assignee, and, since assignor had not incurred any expenses of repossession, assignee acquired no rights for such expenses under the assignment. Centennial State Bank v. S.E.K. Constr. Co., 518 S.W.2d 143 (Mo. Ct. App. 1974).

Attorney's fees incurred in enforcing the security interest are properly allowed as authorized by the Code and where also authorized by the particular security agreement. Whitson v. Yaffe Iron & Metal Corp., 385 F.2d 168 (8th Cir. Ark. 1967).

47. Secured debt.

In creditor's action to collect on promissory note, to enforce agreement securing it, and to enforce agreement guaranteeing payment of note, contention of guarantors that creditor had improperly conducted foreclosure sale of collateral would be sustained where creditor's own evidence showed that it had violated UCC § 9-504(1) and (2) by applying proceeds of sale to pay off senior liens on collateral before satisfying indebtedness secured by security interest under which disposition of collateral was made. First Union Nat'l Bank v. Tectamar, Inc., 33 N.C. App. 604, 235 S.E.2d 894 (1977).

Where corporate debtor obtained numerous pieces of equipment from secured party in four distinct lots, each subject to distinct, but identical, security agreement, where two of these security agreements were guaranteed by individual guarantors, and where, upon default of all four agreements, secured party repossessed all four lots of equipment and sold them as single unit to single purchaser, secured party was not precluded by UCC from collecting deficiency merely because collateral was not sold in lots corresponding to separate lots in which collateral was first acquired by corporate debtor; even if creditor disposes of collateral in violation of UCC, debtor is not entitled to completely avoid its obligations to creditor, but is only entitled to recover "any loss" occasioned by secured party's failure to comply with appropriate provisions of UCC, and individual guarantors offered no evidence that any loss was suffered by corporate debtor because of form of disposition; furthermore, UCC does not require that repossessed collateral be disposed of in any particular manner and there was no evidence to show that sale of collateral in single lot was not disposition made in good faith and in commercially reasonable manner; however, secured party was not entitled to apply proceeds of sale, first to balances due on two security agreements which were not guaranteed, totally satisfying those obligations, and then to balances due on guaranteed security agreements leaving deficiency on them, but was required under UCC § 9-504(1)(b) to apply proceeds of disposition to satisfaction of indebtedness secured by security interest under which disposition was made. Wilson Leasing Co. v. Seaway Pharmacal Corp., 53 Mich. App. 359, 220 N.W.2d 83 (1974).

48. —Damages for loss of use.

Seller of tractor under purchase money security agreement was not entitled to recover damages from buyer for loss of use of tractor during period that tractor was wrongfully detained by buyer, where seller resold tractor for sum in excess of amount of underlying debt; UCC § 9-504(1) required that proceeds of sale be used to set aside debt, and recovery for loss of use of chattel during period of wrongful detention would effectively amount to double recovery. Housatonic Tractor Corp. v. Kamins, 50 A.D.2d 586 (2d Dep't 1975).

Where debtor sold vehicles that were subject to security interest to third party, secured party was entitled, on default, to enforce its right of possession against third party; failure of third party to surrender property immediately upon default and demand prevented secured party from using collateral under UCC § 9-207(4) or reselling or leasing it under UCC § 9-504(1), and third party was liable to secured party for loss of use of property as element of damages. Long Island Trust Co. v. Porta Aluminum, Inc., 49 A.D.2d 579 (2d Dep't 1975).

49. —Interest.

Under Uniform Commercial Code Article 9, a security agreement may impose various charges that are not contained in the promissory note, with respect to which the security agreement was made, in the event of the debtor's default on the note. For example, under UCC § 9-504(1)(a) and § 9-506, the security agreement may provide for the debtor's payment, in the event of default, of the legal expenses and charges for repossession, storage, and redemption of the collateral. Furthermore, a valid acceleration clause in the security agreement can establish, in the event of default, a legal basis for collection from the debtor of both principal and accrued interest on the note. General Fin. Corp. v. Sprouse, 577 F.2d 989 (5th Cir. 1978).

A lender whose security agreements provided for the debtor to pay a charge for what the lender contended was a "bonus" or capital payment but what was actually precomputed interest, may not collect that unearned interest from the proceeds of a public auction and sale which followed the debtor's default and acceleration of its indebtedness. Bostwick-Westbury Corp. v. Commercial Trading Co., 94 Misc. 2d 401 (1978).

Prior chattel mortgagee, after chattel mortgagor's default on loans and mortgagee's sale of collateral at public auction, was not entitled to deduct from sale proceeds amounts denominated "bonus" and "charges," so as to deprive subsequent chattel mortgagee of its rightful share, under UCC § 9-504(1)(c) and (2), of sale's proceeds because (1) such "bonus" and "charges" were actually "interest" on prior mortgagee's loan to debtor within meaning of UCC § 3-118(d), and (2) under New York law, lender was not entitled to collect unearned interest on money loaned in absence of subsequent agreement between lender and debtor. Bostwick-Westbury Corp. v. Commercial Trading Co., 94 Misc. 2d 401 (1978).

50. Subordinate interests.

Under UCC § 9-504(5), guarantor of debtor's note, as subrogee to rights of secured party, was successor to all of secured party's rights against debtor, including security interest in debtor's equipment. Manufacturers & Traders Trust Co. v. Goldman, 578 F.2d 904 (2d Cir. N.Y. 1978).

Creditor which had perfected security interest in most of debtor's assets on April 3, 1972, by filing proper financing statements, and which subsequently perfected such security interest in all of debtor's assets on January 28, 1975, by taking possession thereof, had under UCC § 9-301(1) and UCC § 9-312 right to assets superior to right of second creditor which did not acquire interest in assets until April 11, 1975, when it levied execution on judgment against debtor and became lien creditor under UCC § 9-301(3). Thus, on debtor's default, first creditor could sell such assets under UCC § 9-504(1) and retain all proceeds of sale when proceeds did not fully satisfy debt owed to such creditor. GE Co. v. Hol-Gar Mfg. Corp., 431 F. Supp. 881 (E.D. Pa. 1977), aff'd, 573 F.2d 1301 (3d Cir. Pa. 1978).

In action in nature of interpleader to determine whether secured creditor or feedmen claiming agister's liens were entitled to proceeds from sale of debtor's collateral, where (1) secured creditor, which had perfected its security interest in all of debtor's collateral, peacefully took possession of collateral after debtor's default and sold it at public auction under UCC § 9-504(1), (2) feedmen's agister liens did not come into existence until after perfection of creditor's security interest, and (3) trial court's judgment in favor of feedmen was based on alleged agreement between secured creditor and feedmen that feedmen, if their claims were paid from the sale's proceeds, would not disrupt sale by announcing to those present that they had lien on property being sold, court would award sale proceeds to secured creditor which clearly had prior right thereto. In such case, even assuming that alleged contract between secured creditor and feedmen had been made, contract was unenforceable because forbearance to exercise nonexistent "right" to interfere with commercially reasonable sale could not constitute valid consideration for such contract. Agristor Credit Corp. v. Unruh, 571 P.2d 1220 (Okla. 1977).

Purchasers of assets of tavern business at foreclosure sale were not liable to prior secured party who had unperfected security interest in tavern business assets, notwithstanding prior secured party was not given notice of sale; fact that foreclosure purchasers had knowledge of prior interest in collateral was not by itself evidence of bad faith, as foreclosing party's security interest was superior to prior secured party's security interest, foreclosure purchasers paid substantial price ($110,000) for assets, and there was no evidence that foreclosure purchasers knew that foreclosing parties failed to give notice required by UCC § 9-504. Young v. Golden State Bank, 39 Colo. App. 45, 560 P.2d 855 (1977).

In creditor's action to collect on promissory note, to enforce agreement securing it, and to enforce agreement guaranteeing payment of note, contention of guarantors that creditor had improperly conducted foreclosure sale of collateral would be sustained where creditor's own evidence showed that it had violated UCC § 9-504(1) and (2) by applying proceeds of sale to pay off senior liens on collateral before satisfying indebtedness secured by security interest under which disposition of collateral was made. First Union Nat'l Bank v. Tectamar, Inc., 33 N.C. App. 604, 235 S.E.2d 894 (1977).

Where corporate debtor obtained numerous pieces of equipment from secured party in four distinct lots, each subject to distinct, but identical, security agreement, where two of these security agreements were guaranteed by individual guarantors, and where, upon default of all four agreements, secured party repossessed all four lots of equipment and sold them as single unit to single purchaser, secured party was not precluded by UCC from collecting deficiency merely because collateral was not sold in lots corresponding to separate lots in which collateral was first acquired by corporate debtor; even if creditor disposes of collateral in violation of UCC, debtor is not entitled to completely avoid its obligations to creditor, but is only entitled to recover "any loss" occasioned by secured party's failure to comply with appropriate provisions of UCC, and individual guarantors offered no evidence that any loss was suffered by corporate debtor because of form of disposition; furthermore, UCC does not require that repossessed collateral be disposed of in any particular manner and there was no evidence to show that sale of collateral in single lot was not disposition made in good faith and in commercially reasonable manner; however, secured party was not entitled to apply proceeds of sale, first to balances due on two security agreements which were not guaranteed, totally satisfying those obligations, and then to balances due on guaranteed security agreements leaving deficiency on them, but was required under UCC § 9-504(1)(b) to apply proceeds of disposition to satisfaction of indebtedness secured by security interest under which disposition was made. Wilson Leasing Co. v. Seaway Pharmacal Corp., 53 Mich. App. 359, 220 N.W.2d 83 (1974).

51. Surplus.

Under UCC § 9-504(5), guarantor of debtor's note, as subrogee to rights of secured party, was successor to all of secured party's rights against debtor, including security interest in debtor's equipment. Manufacturers & Traders Trust Co. v. Goldman, 578 F.2d 904 (2d Cir. N.Y. 1978).

Under UCC § 9-501(3)(a), debtor's right to surplus under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), in the case of a transfer for security as opposed to a sale, cannot be waived by agreement of the parties. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Where (1) plaintiffs sought damages in class action against automobile credit company and automobile dealers for fraudulent and deceptive trade practices allegedly carried on by defendants as part of illegal combination and conspiracy in restraint of trade, in violation of Federal Trade Commission Act and Sherman Anti-Trust Act, and (2) plaintiffs' complaint had as its sole thrust the claim that plaintiffs had been misled into not claiming surplus due them under UCC § 9-504(2) following repossession and resale, after default, of cars purchased by plaintiffs, court held that although plaintiffs might be asserting a wrong and might have a common-law remedy by way of a tort or contract action, defendants' alleged conduct clearly was not intended to restrict competition and did not have effect of restricting it. Summey v. Ford Motor Credit Co., 449 F. Supp. 132 (D.C.S.C. 1976), aff'd, 573 F.2d 1306 (4th Cir. S.C. 1978).

Under UCC § 9-202, legal title to equipment of corporation, if not immaterial, was not decisive as to extent to which equipment could be carried as asset on corporation's balance sheet, even when transaction was cast in terms of lease-purchase option agreement, and in light of UCC § 9-504(2), such equipment represented net asset to extent that its value exceeded any indebtedness secured by it. Ellzey v. Fyr-Pruf, Inc., 376 So. 2d 1328 (Miss. 1979).

Where there was no claim that collateral had not been sold in "commercially reasonable" manner as required by UCC § 9-504(3) and where collateral was sold for less than unpaid balance due on note, secured party was not required to account to debtor for surplus resulting from sale of collateral as provided by UCC § 9-504(2). Panagiotes v. Plummer, 5 Mass. App. Ct. 821, 362 N.E.2d 555 (1977).

Where stock that was security for loan was surrendered by escrow agent to secured party following debtor's default, at which time its market value was less than amount due on loan, and where secured party sought to recover deficiency, but retained stock and had it registered in secured party's name, actions of secured party did not constitute "otherwise disposing of collateral" within meaning of UCC § 9-504(1) and debtor was entitled to relief under UCC § 9-507 when stock subsequently appreciated in value to amount in excess of secured loan. In re Copeland, 531 F.2d 1195 (3d Cir. Del. 1976).

Proceeds from disposition of pledged bonds in excess of amount owed to creditors, who had security interests under UCC §§ 9-203 and 9-204, belonged under UCC §§ 9-502 and 9-504 to debtors, and creditors were not entitled to retain entire collateral under UCC § 9-505 in absence of compliance with notice requirement under UCC § 9-505. Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976).

Under UCC § 9-504 secured creditor must account for any surplus realized from use or sale of collateral in excess of debt secured and under UCC § 9-112 surplus belongs to owner of collateral; thus, in action to obtain accounting from secured party for money or benefit it received from use and sale of equipment it repossessed and for judgment for any amount exceeding note secured by lien agreement on equipment, pleadings sufficiently alleged plaintiff's entitlement to any surplus which might exist where pleading, inter alia, alleged that equipment belonged to plaintiff. C & L Serv. Co. v. Northern Equip. Co., 525 P.2d 1260 (Okla. Ct. App. 1974).

Where secured party repossessed mobile home, which had been purchased by 2 debtors, sold repossession title to one debtor who in turn sold mobile home to third party and third party borrowed money from secured party to make purchase, and where net result of transaction was that secured party canceled balance due on original installment sales contract, $698.75, paid debtor $1,502.36, and became creditor of third party for sum of $2,201.11, transaction amounted to sale of repossessed mobile home to third party for $2,201.11 leaving surplus of $1,502.36 and other debtor, who was not given notice of sale, was entitled to one half of surplus. Morris v. Number 5 Credithrift of Am., Inc., 20 Ill. App. 3d 280, 314 N.E.2d 616 (5th Dist. 1974).

In action by plaintiff-debtor to recover surplus from foreclosure sale of used truck, where truck had been purchased by plaintiff for $23,500, plaintiff defaulted, and approximately six months after sale to plaintiff truck was resold for $21,494.40 in cash, plus trade-in allowance of $7,561.60 on vehicle which was later sold for $1,400, or total price of $29,056, surplus in favor of plaintiff should be computed by using actual market value of trade-in vehicle, $1,400, and not on basis of trade-in allowance. Webster v. GMAC, 267 Or. 304, 516 P.2d 1275 (1973) but see Carlson v. Blumenstein, 293 Or. 494, 651 P.2d 710 (1982).

Where secured party and cosigner of note failed after repossession of collateral to proceed in accordance with UCC provisions for disposition of collateral upon default, debtor was entitled to recover as damages value of security less debt. Farmers State Bank v. Otten, 87 S.D. 161, 204 N.W.2d 178 (1973).

E. Deficiencies.

52. In general; scope.

Where secured party obtained default judgment on debtor's promisory notes covering loans on two vehicles and then, after failure of its attempted levy on vehicles, sought to replevy them pursuant to provisions of its security agreement, with debtor, court held (1) that under UCC §§ 9-501(1) and (5) and Official Comment 6, secured party was not precluded from replevying vehicles under the security agreement by first having obtained default judgment on the debt; (2) that plaintiff's security interest in vehicles did not merge into such judgment because plaintiff had two separate causes of action, namely, to reduce debt to judgment and to foreclose under its security agreement; (3) that UCC §§ 9-501(1) and (5) were intended to abolish doctrine of election of remedies; (4) that New Mexico UCC § 9-504(2) (not part of Official UCC), which provides that debtor is liable for any deficiency except where collateral is consumer goods, did not prevent plaintiff from replevying vehicles in suit, which were consumer goods, since New Mexico UCC § 9-504(2), by its own terms, contemplated a "deficiency"; (5) that there could be no deficiency in present case until there had been a repossession and sale of consumer goods constituting debtor's collateral; and (6) that until such sale and an attempt to collect any resulting deficiency, debtor had not been injured. Ruidoso State Bank v. Garcia, 92 N.M. 288, 587 P.2d 435 (1978).

Secured creditor who has liquidated his security may maintain action for deficiency judgment, but such secured creditor has burden to prove that due notice of sale as provided by law was given to debtor and that sale was commercially reasonable. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Where defendant buyer purchased airplane secured by contemporaneously executed security agreement from plaintiff's assignor with intent that it be used for personal rather than commercial purposes, and aircraft was, in fact, used solely for personal purposes for three months after purchase, airplane constituted "consumer goods" within meaning of Washington version of UCC § 9-501(1), which makes defaulting debtor not liable for any deficiency after secured party has disposed of collateral in cases involving purchase money security interests in consumer goods taken or retained by sellers of such collateral, notwithstanding defendant did make plane available for rental about nine months after executing security agreement and notwithstanding airplane was expensive hobby item. Commercial Credit Equip. Corp. v. Carter, 83 Wash. 2d 136, 516 P.2d 767, 77 A.L.R.3d 1218 (1973).

Common-law doctrine of election of remedies was abrogated by UCC § 9-504(2) which entitled secured creditor, after repossession and sale of motor vehicle upon default in payment of sum due under retail instalment contract, to deficiency judgment against defaulting purchaser. Swindel v. General Fin. Corp., 265 So. 2d 393 (Fla. App. 1972).

A security holder who has repossessed a truck under a defaulted conditional sales contract is required to liquidate it at reasonable public sale as a condition of seeking further recovery from the conditional purchaser; and the conditional purchaser's obligation is limited to whatever deficiency remains after such a sale. Cox Motor Car Co. v. Castle, 402 S.W.2d 429 (Ky. 1966).

53. Agreements of parties.

Action by assignee of installment contract against assignor for deficiency judgment after assignee had repossessed and sold collateral; held, assignee's only recourse was against purchaser where no formal demand for repurchase was made by assignee as provided in dealer agreement between parties. Foundation Discts., Inc. v. Serna, 81 N.M. 474, 468 P.2d 875 (1970), overruled on other grounds, 87 N.M. 451, 535 P.2d 1077 (1975).

When the debtor returns the collateral to the secured seller and the latter accepts it, there is an accord and satisfaction that terminates the liability of the debtor for any loss on resale of the collateral. Johnson v. Commercial Credit Corp., 117 Ga. App. 131, 159 S.E.2d 290 (1968).

Where an assignee of a conditional sales contract which repossessed an automobile on conditional buyer's default in making of payments sold the automobile four days after repossession in violation of Mass GL c. 255, § 11, there was a breach of contract by such assignee, precluding the maintenance of an action for deficiency predicated upon the resale. Associates Disct. Corp. v. Girard, 19 Mass. App. Dec. 95 (1960).

54. Commercial reasonableness.

The failure to give a debtor notice of sale when required under subd (3) of this section does not completely discharge his obligation to pay any resulting deficiency, but he has the right to recover from the secured party any loss occasioned by the failure to give notice. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

Defendants, as personal guarantors of a corporate loan used to purchase machinery, may, in an action by plaintiff bank to recover a deficiency judgment against them following repossession and sale of the mortgaged equipment, properly set up the defense available to the debtor corporation as the principal obligor, that plaintiff failed to prove "reasonable notification" of the sale to the debtor corporation and that the "method, manner, time and terms" of the disposition of the repossessed equipment were "commercially reasonable" (Uniform Commercial Code, § 9-504) since, as a general rule a surety, defending an action against his principal, may set up any legal or equitable defense which would have availed the principal and is not bound by the default of the principal and may contest its liability to the indemnitee. Banker's Trust Co. v. Steenburn, 95 Misc. 2d 967 (1978), aff'd, 70 A.D.2d 786 (4 Dep't 1979).

UCC § 9-504(3) requires, as condition to right of secured party to obtain deficiency judgment, that disposition of collateral be effected with reasonable notification to debtor and that it also be commercially reasonable. Banker's Trust Co. v. Steenburn, 95 Misc. 2d 967 (1978), aff'd, 70 A.D.2d 786 (4 Dep't 1979).

Disposition of collateral, which consisted of an electronic two-way communications system, was not commercially reasonable under UCC § 9-504(3) where (1) secured party was successful bidder at public auction of the collateral, (2) only one other bid was made, (3) bidders in attendance at sale with any real interest in the collateral were few in number, (4) few efforts were made to encourage meaningful bidding, and (5) substantial disparity existed between price recovered on the disposition ($32,775) and deficiency for which judgment was sought (slightly over $325,000). Associates Capital Servs. Corp. v. Riccardi, 454 F. Supp. 832 (D.R.I. 1978).

Repossession and disposition procedures used by secured party did not comply with those provided in Article 9 of UCC where, after repossessing automobiles, notice of sale was sent by registered mail to each defaulting purchaser advising him that his car would be sold at public auction to highest bidder on specified date for not less than specified minimum amount, where only public notice of sale was blackboard placed in office of secured party listing date of sale, initials of defaulting purchaser, and year and make of automobile, where secured party did not conduct sale at public auction, as stated in notice of sale, but on date of sale credited debtor's account with minimum price stated in notice of sale and then proceeded to collect deficiency by taking judgment on cognovit notes signed by debtors, and where secured party then obtained repossession titles for automobiles involved and resold them from its used car lot, at retail, to other consumers at substantially higher prices than amounts credited. Although UCC § 9-505(2) authorizes secured party in possession of repossessed goods to retain those goods in satisfaction of debtor's obligations, provided written notice of such intention is sent to debtor and debtor does not object within 30 days, and although debtors in present case made no objection to proceedings, secured party did not comply with provisions of UCC § 9-504 and, thus, was not entitled to deficiency judgment as permitted under UCC § 9-504(2). Miles v. N.J. Motors, Inc., 44 Ohio App. 2d 351, 338 N.E.2d 784 (1975).

Compliance with Code § 9-504(3) is condition precedent to recovery of any deficiency between sale price of collateral and amount of unpaid balance; and where plaintiffs had not been informed as to whether defendants contemplated private or public sale of diamond bracelet pledged as security on note and plaintiff had not waived demand to redeem and notice of time and place of sale, defendants were not entitled to recover alleged deficiency or attorney fees. Aimonetto v. Keepes, 501 P.2d 1017 (Wyo. 1972).

55. —Notice defects; deficiency judgment denied.

Where (1) seller sold computer system under purchase agreement which provided that seller would retain security interest in goods until balance of purchase price was paid, (2) buyer, after taking possession of goods on January 14, 1975, advised seller on January 30, 1975 to repossess them for seller's protection because buyer was in financial difficulty, and (3) seller, after repossessing goods on February 3, 1975, subsequently returned part of them to seller's new-equipment inventory without separately identifying such goods from goods already in inventory and also, without notifying buyer, resold some of the repossessed goods to third persons, court held (1) that seller was limited to remedy of security-interest holder under UCC § 9-504, which governed seller's right to repossess the goods in suit, dispose of them, and apply their proceeds, and (2) that because seller, on reselling some of the goods after their repossession, had failed to give buyer notice of sale required by UCC § 9-504(3), seller under California construction of UCC § 9-504(3) could not recover deficiency on unpaid purchase price from buyer. Nixdorf Computer, Inc. v. Jet Forwarding, Inc., 579 F.2d 1175 (9th Cir. Cal. 1978).

Where assignee (secured party) of equipment lease of drilling machine, on default of colessees, repossessed machine and, without giving written notice of any public or private sale thereof to either colessees or lease's guarantors, sold machine more than one year after repossessing it, assignee was not entitled to deficiency judgment because of its failure to act in good faith and in commercially reasonable manner under UCC § 9-504(3). National Equip. Rental, Ltd. v. Holes, Inc., 460 F. Supp. 118 (C.D. Cal. 1978), aff'd, 642 F.2d 456 (9th Cir. Cal. 1981).

In creditor's action against trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

UCC § 9-504(3) requires, as condition to right of secured party to obtain deficiency judgment, that disposition of collateral be effected with reasonable notification to debtor and that it also be commercially reasonable. Banker's Trust Co. v. Steenburn, 95 Misc. 2d 967 (1978), aff'd, 70 A.D.2d 786 (4 Dep't 1979).

Failure of secured party to give debtor notice of sale of the collateral, as required by UCC § 9-504(3), absolutely bars any deficiency judgment. Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Where bank upon default of note and commercial equipment security agreement sold collateral without giving notice to guarantors, under UCC § 9-504(3) failure of secured party to give requisite notice prior to sale or disposition of collateral precluded action for deficiency against guarantor. Barnett v. Barnett Bank, 345 So. 2d 804 (Fla. App. 1977), but see Ayares-Eisenberg Perrine Datsun v. Sun Bank, 455 So. 2d 525 (Fla. Ct. App. 1984).

Where no notice of time, date, place and manner of sale was ever given to debtor by secured party as is normally required under UCC § 9-504(1) and (3), secured party was not entitled to deficiency judgment or attorney's fees and debtor was entitled to damages pursuant to UCC § 9-507. Chrysler Credit Corp. v. Burns, 562 P.2d 233 (Utah 1977).

Seller's assignee, in suit for deficiency judgment following sale of repossessed collateral, was properly denied recovery where evidence showed (1) that assignee did not sell collateral in commercially reasonable manner required by UCC § 9-504(3), (2) that debtor was not notified of sale, and (3) that assignee's sole witness did not know how sale had been conducted, or whether numerous bids had been solicited in order to get best price obtainable for collateral, or what market value of collateral was at time of sale. In such case, which was tried without a jury, since trial court was deprived of knowledge of amount that assignee should have realized from commercially reasonable sale and no evidence was introduced as to collateral's market value, trial court under UCC § 2-723(2) could look to market value of collateral on date of its purchase by debtor and reasonably view such value as continuing until sale of collateral, with result that no deficiency was owed by debtor to assignee. Aetna Fin. Co. v. Ables, 559 S.W.2d 139 (Tex. Civ. App. 1977).

Where owner of automobile, which was repossessed after default on installment contract, did not receive notice of place of public sale and where, although automobile was in good condition, proceeds obtained less than six months after initial purchase were only about 55% of the amount originally financed, creditor could not recover deficiency judgment in absence of showing that the method, manner, time, place and terms of sale were in fact commercially reasonable. Marine Midland Bank-Central v. Watkins, 89 Misc. 2d 949 (1977).

Although bank was permitted to dispose of repossessed automobile without judicial process or notice to co-signer of installment sales contract, bank was not entitled under UCC § 9-504(3) to deficiency judgment against co-signer, where bank failed to give notice to co-signer of intended sale of repossessed automobile. Washington v. First Nat'l Bank, 332 So. 2d 644 (Fla. App. 1976).

In action to recover deficiency judgment from debtor and guarantor after sale of property taken by bank under security instruments, where bank disposed of property in several transactions and in some of transactions failed to give notice of sale as required by UCC § 9-504(3) and in others failed to prove reasonableness of notice, i.e., notice should be sent in such time that debtors would have minimum of three business days to arrange to protect interests, failure to give notice barred recovery of deficiency judgment. DeLay First Nat'l Bank & Trust Co. v. Jacobson Appliance Co., 196 Neb. 398, 243 N.W.2d 745 (1976). But see Howard Kool Chevrolet v. Blomstedt, 2 Neb. App. 493, 511 N.W.2d 222 (1994).

Guarantors of promissory note secured by collateral were "debtors" within meaning of UCC §§ 9-105(1)(d) and 9-504(3) and were entitled to reasonable notification prior to disposition of collateral by secured party; failure to provide such notice precluded entry of deficiency judgment in action by secured party against guarantors. Hepworth v. Orlando Bank & Trust Co., 323 So. 2d 41 (Fla. App. 1975).

Secured party was not entitled to recover alleged deficiency due after sale of repossessed automobile since (1) three days' notice of resale was not commercially reasonable under UCC § 9-504(3); (2) sale of automobile for only $50 was not in good faith, under UCC § 1-203, or in commercially reasonable manner under UCC § 9-504(3), although automobile was inoperable, where casual inspection would have revealed that automobile was missing spark plugs, points and air cleaner, and installation of these items would have made car operative and would only have required small expenditure; and (3) presumption that collateral was worth at least amount of debt, which arose as result of secured creditor's failure to give sufficient notice of resale, was not overcome by creditor's evidence. Franklin State Bank v. Parker, 136 N.J. Super. 476, 346 A.2d 632 (1975).

Secured party was not entitled to recover deficiency judgment on promissory notes secured by mobile home and automobile where secured party took possession of mobile home and automobile and sold them without notice to debtor as required by UCC § 9-504(3). FDIC v. Farrar, 231 N.W.2d 602 (Iowa 1975).

Judgment in favor of secured creditor for reimbursement of fuel taxes paid to state board of equalization in order to obtain clear title to repossessed trucks before they were sold in satisfaction of debtor's defaulted obligation, was deficiency judgment, since taxes should have been paid out of proceeds of sale before satisfaction of debtor's underlying indebtedness. Accordingly, such judgment required reversal where creditor did not comply with requirements of UCC § 9-504(3), concerning notice of sale, in that notice to debtor did not explicitly set forth exact date, time, and place of sale, but only informed debtor that collateral would be sold at end of seven days from date of letter to debtor and could be inspected at creditor's premises, where no public sale in terms of auction was in fact conducted, and where, even if creditor had complied with notice requirements, it failed to allege or prove such compliance in its complaint. J.T. Jenkins Co. v. Kennedy, 45 Cal. App. 3d 474 (2d Dist. 1975).

Where secured party failed to give required notice of sale of collateral and failed to conduct sale in commercially reasonable manner, this failure barred deficiency judgment where the failure was raised as affirmative defense. Atlas Thrift Co. v. Horan, 27 Cal. App. 3d 999, 59 A.L.R.3d 389 (3d Dist. 1972).

A secured creditor may not recover a deficiency judgment under the UCC after a sale of a repossessed article that was not conducted in accordance with the notice provisions of UCC § 9-504(3). Leasco Data Processing Equip. Corp. v. Atlas Shirt Co., 66 Misc. 2d 1089 (1971).

Auto dealer sold car to defendant-buyer for net sum of $1700; dealer assigned sales contract to plaintiff-assignee; plaintiff-assignee repossessed auto and sold it back to dealer for $348; dealer resold auto for $1050; held, $348 transaction was mere transfer, not sale or disposition, of collateral; therefore, notice of this transaction to defendant-buyer could not comply with requirement of "reasonable notification of time and place" of sale of repossessed collateral, and plaintiff-assignee could not recover balance due on contract, where defendant-buyer had not been notified of resale of auto for $1050. Jefferson Credit Corp. v. Marcano, 60 Misc. 2d 138 (1969).

New York courts would not permit the holder of a conditional automobile sales contract to secure a deficiency judgment, where the car had been repossessed and sold in Massachusetts without notice to the debtor in violation of the Massachusetts Uniform Commercial Code, although such a sale was permissible under the laws of the District of Columbia where the contract was originally made. Associates Disct. Corp. v. Cary, 47 Misc. 2d 369 (1965).

56. —Notice defects; deficiency judgment granted.

Section 9-504 of the Uniform Commercial Code, which provides that after the debtor defaults on a debt a secured party may sell, lease or otherwise dispose of any collateral in the manner provided in the statute and the debtor shall be liable for the deficiency, is applicable to determine the rights of the parties where plaintiff, a secured party which took possession of collateral upon the default of defendant debtors, received a letter from defendants, as maker and guarantors of the note, consenting to plaintiff's proposal to retake the collateral and, as to the inventory, consenting to plaintiff's suggested method of disposition, inasmuch as not only was it within their power to set the standards by which their rights and duties were to be measured (Uniform Commercial Code, § 9-501, subd [3]), but having accepted the terms in plaintiff's letter, defendants may not challenge the method of disposition or value placed on the inventory. Plaintiff failed to comply with the provisions of section 9-504 regarding fixtures where a letter from plaintiff contained no proposal for their disposition and defendants' consent extended no further than agreeing to possession, since section 9-504 requires that after taking, the collateral shall be disposed of in a commercially reasonable manner after notice to the debtor; however, this failure to comply does not deprive plaintiff of its deficiency judgment, but it must prove, at trial, the amount of the debt, the fair market value of the security and the resulting deficiency. S.M. Flickinger Co. v. 18 Genesee Corp., 71 A.D.2d 382 (4th Dep't 1979).

Plaintiff bank, which upon defendant securities dealer's default was entitled, according to the terms of a security agreement, to liquidate municipal bonds held as collateral for loans made to defendant, disposed of the bonds in a commercially reasonable manner in light of the standard prevailing in the municipal securities market (Uniform Commercial Code, § 9-504, subd [3]) where the proceeds received from the sale were the actual market value on the date of the sale and the bonds were sold through regular market channels; a secured party has a right to protect its legitimate self-interest and need not fall back upon his debtor's recommendations in order to satisfy his duty of reasonable care; accordingly, plaintiff's motion for summary judgment to recover a deficiency from the sale should be granted as a matter of law. Bankers Trust Co. v. J.V. Dowler & Co., 47 N.Y.2d 128, 390 N.E.2d 766 (1979).

UCC § 9-504(3) requires, as condition to right of secured party to obtain deficiency judgment, that disposition of collateral be effected with reasonable notification to debtor and that it also be commercially reasonable. Banker's Trust Co. v. Steenburn, 95 Misc. 2d 967 (1978), aff'd, 70 A.D.2d 786 (4 Dep't 1979).

Where secured creditor who has liquidated his security fails to sustain his burden of proving that due notice of sale of collateral as provided by law was given to debtor and that sale of collateral was commercially reasonable, debtor may still recover deficiency judgment by proving amount of debt, fair value of security, and resulting deficiency. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Where equipment lessees were given ample time to arrange for sale of equipment following their default under lease agreement, sale of equipment by lessors was conducted in commercially reasonable manner, and lessees failed to timely raise issue as to lack of statutory notice of sale pursuant to UCC § 9-504(3), lessor was entitled to recover balance due under lease. Maguire Leasing Corp. v. Irving Falb & Co., 49 A.D.2d 540 (1st Dep't 1975).

Action by lessor of computer for deficiency following lessee's default on written lease agreement was not precluded by fact that lessor failed to give lessee notice of resale following repossession as required by UCC § 9-504(3); lessor was entitled to recover entire balance due under lease, where lessee offered no proof of loss resulting from lessor's failure to give notice as provided in UCC § 9-507. Leasco Computer, Inc. v. Sheridan Indus., Inc., 82 Misc. 2d 897 (1975).

Although notice of private sale was insufficient under UCC § 9-504(3) in that it did not specify time after which sale was to be made, secured party was entitled to deficiency judgment against defaulting purchaser of snowmobiles where competitive bid method utilized by secured party was commercially reasonable under UCC § 9-504(1) and (3), defendant-purchaser had voluntarily relinquished possession of collateral because he had been unable to sell snowmobiles, purpose of relinquishment was to allow plaintiff to sell them, and defendant had notice of secured party's intention to sell snowmobiles, made no response, and was financially unable to take any action. Commercial Credit Corp. v. Wollgast, 11 Wash. App. 117, 521 P.2d 1191 (1974), review denied, 84 Wash. 2d 1004 (1974).

Seller is entitled to deficiency judgment from debtor under UCC § 9-504 where one of several items of equipment in the possession of the secured party has been sold without reasonable notice of the sale having been first given to the debtor. Grant County Tractor Co. v. Nuss, 6 Wash. App. 866, 496 P.2d 966 (1972), review denied, 81 Wash. 2d 1001 (1972).

57. —Price.

A defendant guarantor, conceding the validity of a guarantee agreement and the default in installment payments by the purchaser, is entitled to a trial on the issue of whether the foreclosure sale by the plaintiff secured party was performed in a commercially reasonable manner pursuant to section 9-504 of the Uniform Commercial Code since there was a marked discrepancy between the sale item's appraised value and the sale price thus increasing the amount of the deficiency judgment claimed by the secured party and that language in the guarantee agreement stating that the guarantor "waives exercise of possessory, foreclosure or other remedies by you [secured party] against Customer" does not constitute a waiver of guarantor's right to claim that the foreclosure sale was not conducted in a commercially reasonable manner. GECC v. Durante Bros. & Sons, 96 Misc. 2d 561 (1978).

Secured party was not entitled to recover alleged deficiency due after sale of repossessed automobile since (1) three days' notice of resale was not commercially reasonable under UCC § 9-504(3); (2) sale of automobile for only $50 was not in good faith, under UCC § 1-203, or in commercially reasonable manner under UCC § 9-504(3), although automobile was inoperable, where casual inspection would have revealed that automobile was missing spark plugs, points and air cleaner, and installation of these items would have made car operative and would only have required small expenditure; and (3) presumption that collateral was worth at least amount of debt, which arose as result of secured creditor's failure to give sufficient notice of resale, was not overcome by creditor's evidence. Franklin State Bank v. Parker, 136 N.J. Super. 476, 346 A.2d 632 (1975).

Where a finance company failed to give the automobile dealer notice where it sold automobiles removed from the dealer's place of business, the finance company could not recover from the dealer for losses sustained on sales of automobiles and the expenses of such sales. Skeels v. Universal C.I.T. Credit Corp., 222 F. Supp. 696 (W.D. Pa. 1963), vacated on other grounds, 335 F.2d 846 (3d Cir. Pa. 1964).

58. Evidence and burden of proof.

Secured party who (1) pursuant to UCC § 9-504(1) sold collateral (truck tractor) at private sale for $1,000, although debtor had borrowed $25,000 from secured party to buy collateral, (2) did not give debtor notice of sale required by UCC § 9-504(3), and (3) allegedly violated UCC § 9-504(3) by conducting sale in commercially unreasonable manner could maintain action against debtor and guarantor of debtor's note for deficiency judgment on debtor's obligation. However, in such case, secured party had burden of proving that due notice of sale had been given to debtor and that sale had been conducted in commercially reasonable manner. Furthermore, even if secured party should fail to present such proof at the trial, he could still recover deficiency judgment by proving amount of debt, fair value of collateral, and resulting deficiency. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Where secured creditor who has liquidated his security fails to sustain his burden of proving that due notice of sale of collateral as provided by law was given to debtor and that sale of collateral was commercially reasonable, debtor may still recover deficiency judgment by proving amount of debt, fair value of security, and resulting deficiency. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Notwithstanding secured party's failure to notify debtor, as required by UCC § 9-504(3), of sale of collateral after debtor's default, secured party still has right to bring action for deficiency judgment, since debtor under UCC § 9-507(1) has right of action against secured party for latter's failure to proceed properly with sale of collateral. However, if secured party sells collateral without giving debtor notice required by UCC § 9-504(3), he must then prove, in his action for deficiency judgment, that reasonable value of collateral at time of sale was less than amount of debt owed by debtor. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

Creditor's default sale of tractor was not commercially reasonable as required by UCC § 9-504(3) where debtors had no notice other than posting of notice of sale at courthouse and where there was no evidence that tractor was sold in any recognized market for used tractors, that it was sold at price current on any such market, or that it was sold in conformity with reasonable commercial practices among tractor dealers; however, creditor was not absolutely barred from recovering deficiency judgment against debtor in any amount; rather debt was to be credited with amount that reasonably should have been obtained through sale conducted in reasonably commercial manner according to UCC and creditor's failure to dispose of collateral as required by Code raised presumption that collateral was worth at least amount of debt, which placed upon creditor burden of overcoming such presumption by proving market value of collateral by evidence other than resale price. Hodges v. Norton, 29 N.C. App. 193, 223 S.E.2d 848 (1976).

Although secured party failed to give notice of sale of repossessed automobile, secured party would be entitled to recover deficiency judgment, but would have burden of proving market value of collateral by evidence other than amount received at repossession sale. Community Mgt. Ass'n v. Tousley, 32 Colo. App. 33, 505 P.2d 1314 (1973).

As a prerequisite to the recovery of a deficiency judgment, the secured party has the burden, under UCC § 9-504(3), of proving either the actual value of the collateral at the time of its sale after repossession or proving that reasonable notice was sent (receipt need not be proven). Leasing Assocs. v. Slaughter & Son, 450 F.2d 174 (8th Cir. Ark. 1971).

In the absence of evidence that following the repossession of a truck under a defaulted sales contract the collateral was sold and that a deficiency resulted, the security holder has no claim against the conditional purchaser. Cox Motor Car Co. v. Castle, 402 S.W.2d 429 (Ky. 1966).

F. Purchases for Value.

59. In general.

Sellers of tavern business who had valid, but unperfected, security interest in assets of business presented prima facie case of loss caused by lack of notice under UCC § 9-507(1) where banks that had subsequent, but perfected, security interests in assets of tavern business foreclosed and sold assets to third party, where there was undisputed testimony that banks and third party were aware of sellers' security interest and banks in fact agreed to indemnify third party against claims arising from original security agreement, where banks failed to give notice as required by UCC § 9-504, and where debt owing to banks at time of foreclosure was approximately $45,000, but foreclosure sale grossed $110,000, and difference was unaccounted for. Young v. Golden State Bank, 39 Colo. App. 45, 560 P.2d 855 (1977).

Where automobile dealer financed his used car inventory through floor plan arrangement with finance company and, under side arrangement with second automobile dealer, satisfied his obligations to finance company by assigning used cars to second dealer, who would then issue its note to finance company in release of first dealer's note, but such cars were frequently left on first dealer's lot and sold by him on commission basis, and where first automobile dealer then entered into agreement with credit corporation to finance his new car inventory and executed security agreement in favor of credit corporation covering his inventory, including, inter alia, his used car inventory: (1) Credit corporation acquired perfected security interest in first dealer's used car inventory; (2) security interest was not waived by clause in security agreement providing that private sale of chattel to dealer in such types of chattels for amount originally paid by dealer for such chattel or at lesser fair price would be "commercially reasonable disposition thereof," nor was it waived by fact that credit corporation treated dealer's used car business as completely separate from his new car business which credit corporation was financing; (3) sales of used cars to second dealer, made at arm's length, without fraud and at fair price, were sales in ordinary course of business, and, hence, second dealer acquired title to such cars free of security interest. Weidinger Chevrolet, Inc. v. Universal C.I.T. Credit Corp., 501 F.2d 459 (8th Cir. Mo. 1974), cert. denied, 419 U.S. 1033, 95 S. Ct. 516, 42 L. Ed. 2d 309 (1974).

The failure of the secured party to give the notice required by UCC § 9-504(3) does not impair the title of the good faith purchaser at the sale. Borochoff Properties, Inc. v. Howard Lumber Co., 115 Ga. App. 691, 155 S.E.2d 651 (1967).

A conditional seller of personal property cannot maintain an action for conversion against a third person unless the seller had possession or the right to possession when the chattel was taken from him. Ludlow Rubber Co. v. Mack Truck Sales, Inc., 38 Mass. App. Dec. 78 (1967).

G. Transfers of Collateral.

60. In general.

In action by retail furniture dealer which had entered into agreement with defendant financer, under which plaintiff transferred its accounts receivable to defendant in exchange for, being provided with funds in specified proportion to accounts defendant accepted from plaintiff, to recover sums held in reserve account established by parties' agreement, (1) plaintiff's accounts receivable were not sold to defendant, but were transferred to it as collateral security within meaning of UCC § 9-502(2) in exchange for line of credit defendant extended to plaintiff; (2) as a result, under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), defendant was required to account for, and to turn over to plaintiff, any surplus collected by defendant on the transferred accounts, and plaintiff in turn was liable for any deficiency on such accounts; and (3) surplus held by defendant on loan owed by plaintiff and deficiency on such loan were cross-obligations that must be set off against each other. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Where (1) plaintiff and his wife purchased used mobile home, (2) plaintiff's father-in-law cosigned security agreement and note as accommodation maker, (3) plaintiff defaulted on payments, (4) plaintiff's father-in-law, with secured party's consent, obtained possession of home, paid off balance due on note, and made repairs on home, (5) secured party obtained repossession title in its name, released security agreement, and transferred repossession title to plaintiff's father-in-law without notifying plaintiff, who was in jail, of either the account delinquency or the subsequent transfer of title, and (6) after plaintiff's release from jail, plaintiff's father-in-law sold home with plaintiff's consent, but did not give accounting of sale or proceeds therefrom to plaintiff, court held (1) that plaintiff did not waive right to notice of disposition of home under UCC § 9-504(3), since UCC § 9-501(3)(b) specifically states that such right cannot be waived; (2) plaintiff's father-in-law, as accommodation maker of note, did not fall within scope of UCC § 9-504(5), dealing with transfers of collateral that are not sales and thus do not require notice to debtor; (3) UCC § 9-504(5) did not contemplate complete extinguishment of plaintiff's right to home, as was done in present case by secured party's transfer of repossession title to plaintiff's father-in-law; and (4) under UCC § 9-507(1) and UCC § 1-103, plaintiff was entitled to damages for conversion of home on basis of benefit to defendant wrongdoers, rather than on basis of allowing full value of home as enhanced by wrongdoers. Western Nat'l Bank v. Harrison, 577 P.2d 635 (Wyo. 1978).

In action by plaintiff against two former business associates seeking damages for alleged conspiracy to appropriate stock which plaintiff had pledged to bank as security for loan, where, after plaintiff defaulted, bank sold stock to defendants pursuant to repurchase agreement executed in connection with loan transaction: (1) after default, plaintiff still had legal title to stock, subject to bank's lien which could have been extinguished by public sale as provided in UCC; (2) to recover stock from bank, plaintiff was required to make valid tender of amount of debt, plus accrued interest, as condition precedent to right to maintain suit; (3) under UCC § 9-504(5), when bank conveyed stock to defendants in accord with their repurchase agreement, defendants became subrogated to rights and duties of bank and, hence, plaintiff's action against defendants was barred by his failure to make such tender or to show any excuse or justification therefor. Barnett v. Maida, 503 S.W.2d 610 (Tex. Civ. App. 1973), writ ref'd n.r.e., (May 22, 1974).

Auto dealer sold car to defendant-buyer for net sum of $1700; dealer assigned sales contract to plaintiff-assignee; plaintiff-assignee repossessed auto and sold it back to dealer for $348; dealer resold auto for $1050; held, $348 transaction was mere transfer, not sale or disposition, of collateral; therefore, notice of this transaction to defendant-buyer could not comply with requirement of "reasonable notification of time and place" of sale of repossessed collateral, and plaintiff-assignee could not recover balance due on contract, where defendant-buyer had not been notified of resale of auto for $1050. Jefferson Credit Corp. v. Marcano, 60 Misc. 2d 138 (1969).

H. Practice and Procedure.

61. In general.

In action brought by secured creditor against maker and guarantor of note to recover deficiency alleged to be due on note after secured creditor sold collateral, summary judgment in favor of secured creditor was precluded by existence of factual issues concerning propriety of notice of sale and whether sale was conducted in commercially reasonable manner. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

In action for deficiency judgment following repossession and sale of mobile home, wherein defense was lack of notice as to sale and commercial unreasonableness of sale and defendant counterclaimed for assessment of penalty against plaintiff for noncompliance with Uniform Commercial Code, court erred in striking defendant's interrogatories seeking information concerning sale and inquiring into existence of any relationship that might give reason to question propriety of sale and its commercial reasonableness, but court did not abuse its discretion in striking interrogatories seeking information either irrelevant or previously requested in other interrogatories. Lincoln First Bank v. Rhoades, 59 A.D.2d 1046 (4th Dep't 1977).

In action by new car buyers against automobile dealer and bank for wrongful resale of repossessed motor vehicles, questions relating to bank's failure to give proper notice of disposition of repossessed automobiles and its failure to account to plaintiffs for any surplus were not common questions of fact and law and affecting rights of alleged class and, thus, were not suitable questions for determination in class action. Ridley v. First Nat'l Bank, 87 N.M. 184, 531 P.2d 607 (Ct. App. 1974), cert. denied, 87 N.M. 179, 531 P.2d 602 (1975).

Lower court judge was not justified in concluding that petitioner made the requisite showing of probable success to warrant issuing preliminary injunction in an action to prevent foreclosure on collateral pursuant to statute. Dopp v. Franklin Nat'l Bank, 461 F.2d 873 (2d Cir. N.Y. 1972), on remand, 374 F. Supp. 904 (S.D.N.Y. 1974).

62. Limitation of actions.

Causes of action asserted in an action brought in 1977 based upon the alleged use of confidential information in bad faith in connection with the purchase of pledged collateral at a private sale conducted in 1973, absent an indication of a contractual or fiduciary relationship between the parties, are based either in tort or statutory liability under section 9-504 (subd [4], par [b]) of the Uniform Commercial Code and in either event fall within the three-year Statute of Limitations imposed by CPLR 214 and are therefore time-barred. Sumner v. Century Nat'l Bank & Trust Co., 92 Misc. 2d 726 (1978).

A cause of action based upon the claim that a sale of pledged collateral was made under circumstances which were not commercially reasonable in violation of subdivision (3) of section 9-504 of the Uniform Commercial Code is not an action to recover on a liability imposed by statute within the meaning of CPLR 214 (subd 2) requiring that such actions be commenced within three years, since the duty to conduct a commercially reasonable sale of pledged property exists apart from statute under the general maxims of equity and in order for the three-year limitation to attach the liability must be one which would not exist but for statute. Sumner v. Century Nat'l Bank & Trust Co., 92 Misc. 2d 726 (1978).

Action under Code § 9-504(2) to recover surplus from resale of repossessed article was more closely related to security aspects of contract than it was to that part which concerned original sale, so that action was governed, not by 4 year statute of limitations in Code Sales Article, but by general contract statute of limitations of 6 years. Chaney v. Fields Chevrolet Co., 264 Or. 21, 503 P.2d 1239, 59 A.L.R.3d 1199 (1972).

63. Pleadings.

Allegations by pledgor of stock that officers and directors of corporation conspired with pledgee bank to shift balance of voting power by selling pledged shares in violation of bank's oral agreement and by concealing identity of purchaser, although possibly sufficient to state cause of action in tort for interference with business relations and in violation of UCC § 9-504, were not sufficient to constitute cause of action for fraud under federal securities laws. Dopp v. Franklin Nat'l Bank, 461 F.2d 873 (2d Cir. N.Y. 1972), on remand, 374 F. Supp. 904 (S.D.N.Y. 1974).

64. —Defenses.

If "lease" between parties actually created security interest, debtor was entitled under UCC § 9-501(3)(b) and § 9-504(3) to assert, in action for deficiency judgment following sale of collateral, defense of lack of notice of such sale. Burns v. Equilease Corp., 357 So. 2d 786 (Fla. App. 1978).

Where secured party failed to give required notice of sale of collateral and failed to conduct sale in commercially reasonable manner, this failure barred deficiency judgment where the failure was raised as affirmative defense. Atlas Thrift Co. v. Horan, 27 Cal. App. 3d 999, 59 A.L.R.3d 389 (3d Dist. 1972).

65. Jury issues.

Instruction to jury "that for a sale to be commercially reasonable, the property to be foreclosed must be sold in a manner that similar property is sold in the ordinary course of business in the community, by persons who are in the ordinary business of selling such property," denied secured party the flexibility afforded it under the Uniform Commercial Code (see UCC § 9-504(3)), since it left jury with impression that, as a condition precedent to any sale of an automobile collateral in present case) being "commercially reasonable," it must be sold in same manner that similar property is sold in the ordinary course of business. Wilkerson Motor Co. v. Johnson, 580 P.2d 505 (Okla. 1978).

Under UCC § 9-504(3), whether creditor's disposition of defaulting debtor's collateral was commercially reasonable is ordinarily question of fact. If creditor decides to liquidate collateral, he must act as debtor's fiduciary and make sincere effort to obtain full market value of collateral. In determining whether creditor has discharged his duty, factfinder must consider all aspects of sale of collateral and not merely any disparity between its market price and value realized from its sale; thus, fact that collateral was sold at public sale is not conclusive of question whether its disposition was commercially reasonable. United States v. Terrey, 554 F.2d 685 (5th Cir. Tex. 1977).

In action by buyer for damages for wrongful sale of repossessed automobile against dealer who resold vehicle and bank which had security interest therein, where buyer requested bank employee, while employee was repossessing vehicle on June 9, 1975, to hold vehicle for ten days to allow buyer to redeem it, and employee agreed to such request and orally informed dealer of buyer's intention to redeem; where bank on June 9, 1975, notified buyer by letter that efforts to resell vehicle would commence on June 19, 1975, and would continue until it was resold; where such letter also notified buyer of his right to redeem vehicle before its resale, but did not indicate where resale would take place; and where buyer received such letter on June 14, 1975, which was date on which dealer resold vehicle to third person, (1) bank as secured party at time of default, repossession, and resale violated its duty under UCC § 9-504(3) to give buyer reasonable notice of time and place of such resale and thus could have been found by jury to be liable under UCC § 9-507(1) for not effecting "commercially reasonable" disposition of vehicle under UCC § 9-504(3); (2) bank also could have been found liable for violation of UCC § 9-506 for not permitting buyer to redeem vehicle; and (3) jury could further have found that connection existed between bank and dealer in their prior course of dealing and their conduct in present transaction which demonstrated community of action and interest that would render both liable to buyer, particularly in view of evidence sufficient to show that bank had adopted dealer's actions by accepting dealer's check, based on proceeds of resale, for full payment of balance owed by buyer on vehicle. Wells v. Central Bank, 347 So. 2d 114 (Ala. Civ. App. 1977).

In view of question whether published notice of sale of repossessed bulldozer might have indicated to casual observer that sale had already taken place, total absence of evidence about normal commercial practices in disposition of this type of collateral, length of time elapsing between repossession and sale, possibility that bulldozer may have abnormally deteriorated during that period, failure of seller to notify persons who had expressed interest in purchasing equipment of intended sale, and evidence of remarks made by one who may have been taken to be seller's manager indicating his indifference to price for which bulldozer might be sold, jury question was presented as to seller's good faith and commercial reasonableness of every aspect of disposition of collateral. Farmers Equip. Co. v. Miller, 252 Ark. 1092, 482 S.W.2d 805 (1972).

The question of whether a conditional seller's letter to the purchaser of a subsequently repossessed automobile to the effect that seven days from the letter's receipt, and unless the balance due on the contract was paid, the automobile would be sold at private sale constituted reasonable notice under the provisions of subdivision (3) of this section is one for determination by the trier of fact. Baber v. Williams Ford Co., 239 Ark. 1054, 396 S.W.2d 302 (1965).

I. Decisions Under Former Statutes.

67. In general.

Failure to file a statement within 30 days subordinates the holder of a trust receipt to claims of the trustee's creditors. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484 (1962).

A trustor whose trust receipt has not been filed has nevertheless sufficient interest to seek to set aside a sale on execution for a grossly inadequate price. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484 (1962).

RESEARCH REFERENCES

ALR. What constitutes a "public sale." 4 A.L.R.2d 575.

Necessity and sufficiency of notice of sale to mortgagor where chattel mortgage is sought to be foreclosed without judicial proceedings by sale under power. 30 A.L.R.2d 539.

Rights and duties of parties to conditional sales contract as to resale of repossessed property. 49 A.L.R.2d 15.

Uniform Commercial Code: Burden of proof as to commercially reasonable disposition of collateral. 59 A.L.R.3d 369.

Uniform Commercial Code: Failure of secured creditor to give required notice of disposition of collateral as bar to deficiency judgment. 59 A.L.R.3d 401.

What statute of limitation applies to action for surplus of proceeds from sale of collateral. 59 A.L.R.3d 1205.

Construction of term "debtor" as used in UCC § 9-504(3), requiring secured party to give notice to debtor of sale of collateral securing obligation. 5 A.L.R.4th 1291.

What is "commercially reasonable" disposition of collateral required by UCC § 9-504(3). 7 A.L.R.4th 308.

Loss or modification of right to notification of sale of repossessed collateral under Uniform Commercial Code § 9-504. 9 A.L.R.4th 552.

Failure of secured party to make "commercially reasonable" disposition of collateral under UCC § 9-504(3) as bar to deficiency judgment. 10 A.L.R.4th 413.

Sufficiency of secured party's notification of sale or other intended disposition of collateral under UCC § 9-504(3). 11 A.L.R.4th 241.

Nature of collateral which secured party may sell or otherwise dispose of without giving notice to defaulting debtor under UCC § 9-504(3). 11 A.L.R.4th 1060.

Secured transactions: what is "public" or "private" sale under UCC § 9-504(3). 60 A.L.R.4th 1012.

UCC: value of trade-in taken on sale of collateral for purposes of computing surplus or deficiency. 72 A.L.R.4th 1128.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 534-543.

Rights and remedies of debtor; recovery from secured party for noncompliance; notice of sale not given, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:815, 9:817, 9:819.

Intervention in action by secured party to recover collateral, by owner of collateral not the debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:81.

Default; Rights and remedies of secured party; to recover deficiency following foreclosure sale, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:683.

Default; rights and remedies of secured party; sale or other disposition of collateral, 6 Am. Jur. Pl Pr Forms (Rev), Secured Transactions, Forms 9:751-9:763.

Default; Rights and remedies of debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:792.

Right of secured party to dispose of collateral after default, 19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3771 et seq.

4 Am. Jur. Proof of Facts 2d, Secured Party's Failure to Sell Collateral in Commercially Reasonable Manner, § 12 et seq. (proof that secured party's sale of repossessed collateral was not commercially reasonable).

29 Am. Jur. Proof of Facts 2d 711, Secured Transactions — Waiver of Security Interest.

35 Am. Jur. Proof of Facts 2d 517, Sufficiency of Notice of Secured Party's Proposed Disposition of Collateral.

CJS. 79 C.J.S., Secured Transactions § 153 et seq.

72 C.J.S., Pledges §§ 58, 59 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-611. Notification before disposition of collateral.

(a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 75-9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, ten (10) days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, ten (10) days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 75-9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) Not later than twenty (20) days or earlier than thirty (30) days before the notification date, the secured party requests, in a commercially

reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

SOURCES: Derived from former 1972 Code § 75-9-504 [Codes, 1942, § 41A:9-504; Laws, 1966, ch. 316, § 9-504; Laws, 1970, ch. 272, § 1; Laws, 1977, ch. 452, § 34, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Obligation of good faith, see § 75-1-203.
Seller's resale of goods following buyer's rejection, see § 75-2-706.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-504.

A. Notice.

6. In general; scope.
7. Timeliness.
8. Manner of method.
9. —Mailing.
10. —Mailing; undelivered or unclaimed.
11. Form.
12. Sufficiency.
13. —Public sale.
14. —Private sale.
15. —Actual notice.
16. —Constructive notice.
17. Parties entitled to notice.
18. —Accommodation parties.
19. —Guarantor.
20. —Owner of collateral.
21. —Waiver.
22. Exceptions to notice requirement.
23. —Sale on recognized market.
24. —"Recognized market."
25. Evidence of burden of proof.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-504.

A. Notice.

6. In general; scope.

While § 75-9-504 does not require actual notice, but only reasonable notice, a creditor has a duty to make an additional good faith effort to notify the debtor where the creditor knows that the debtor has not received notice. Fidelity Fin. Servs., Inc. v. Stewart, 608 So. 2d 1111 (Miss. 1992), on rehearing, (Miss. 1992).

Creditor's notice of public sale of collateral was sufficient under UCC § 9-504(3) to inform reasonable business persons of place of sale where (1) such notice was sent to debtor's office in Dallas, Texas; (2) creditor's attorney, who signed notice, gave Houston, Texas address and phone number; (3) address of place of sale was given as "11601 North Houston-Rosslyn Road," although name of city (Houston) in which sale was to take place was not given; (4) name of owner of property to be sold was listed on notice as "Compression, Inc. of Houston, Texas"; and with owner of place in Houston, Texas where sale was conducted and thus had not been misled by failure of notice to state that place of sale was located in Houston, (5) that property had been brought to Houston, where demand for it was greatest, (6) that creditor had obtained property for $100,000 and had later resold it for the same price, (7) that property's subsequent purchaser had refabricated it at some expense and ultimately had obtained only $140,000 for it, (8) that demand at time of sale for that type of property was not great, and (9) that property's fair-market value

($150,000) did not render its sale price ($100,000) grossly inadequate. Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4 (Tex. Civ. App. 1978), ref. n.r.e (Dec. 6, 1978).

Sale of collateral at public auction was void as to debtor where debtor received no notice thereof, as required by UCC § 9-504(3), and waiver of such notice was prohibited by UCC § 9-501(3)(b). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

UCC § 9-504(3) is not applicable to sale of collateral by receiver appointed by court of equity, in case where receiver failed to give debtor timely and proper notice of such sale, since sale was made under court order that the court subsequently confirmed. Sands v. Citizens & S. Nat'l Bank, 146 Ga. App. 853, 247 S.E.2d 544 (1978).

Sale of collateral was not commercially reasonable under UCC § 9-504(3) where secured creditor, after debtor's default and after giving debtor notice of intended sale of collateral, which sale was never consummated because bids received were insufficient, sold collateral at second sale but failed to give debtor notice of second sale, as required by UCC § 9-504(3). Savings Bank v. Booze, 34 Conn. Supp. 632, 382 A.2d 226 (1977).

Holder of security interest in both real and personal property who chose upon debtors' default to proceed under UCC § 9-504(1) by repossessing and selling inventory without judicial process was bound by UCC § 9-504(3) requirement that notice of sale be given. Hildner v. Fox, 17 Ill. App. 3d 97, 308 N.E.2d 301 (1st Dist. 1974).

Failure to give notice as required by paragraph (3) of this section does not bar the plaintiff from recovery. Abbott Motors, Inc. v. Ralston, 28 Mass. App. Dec. 35 (1964).

7. Timeliness.

Where secured party mailed notice to debtor on Wednesday of intention to dispose of collateral by private sale the following Monday, such notice was not commercially reasonable under UCC § 9-504(3) as it did not provide debtor minimum of three business days to arrange to protect interest in collateral. First Nat'l Bank v. Rose, 197 Neb. 392, 249 N.W.2d 723 (1977). But see Old Mill Toyota, Inc. v. Schroder, 3 N.C.A. 953 (Neb. App. 1993).

Secured party failed to give reasonable notice of sale of repossessed mobile home, where notice of private sale to be held on April 10 was mailed to debtor on April 7 and received by him on April 8, and April 9 was holiday. Prairie Vista, Inc. v. Casella, 12 Ill. App. 3d 34, 297 N.E.2d 385 (4th Dist. 1973).

8. Manner of method.

Under UCC § 9-504(3), requiring that notice of intended sale of collateral must be "sent" to debtor, and § 1-201(38), defining word "send," notification of the sale must be in writing. Such written notice will be sufficient under UCC § 9-504(3) if it is either personally delivered to the debtor or sent by mail to the debtor's address. In the latter case, whether or not the debtor receives it will not defeat its sufficiency. McKee v. Mississippi Bank & Trust Co., 366 So. 2d 234 (Miss. 1979).

Where secured party's notice of public sale of automobile (the collateral) was posted on two utility poles in two alleys, and also on side of building but nowhere else, manner in which secured creditor gave notice to public of impending "public sale" of vehicle was so woefully inadequate that it, as matter of law, was not commercially reasonable under UCC § 9-504(3). Wilkerson Motor Co. v. Johnson, 580 P.2d 505 (Okla. 1978).

Under UCC § 9-504(3), requiring that reasonable notification of time and place of any public sale of collateral must be sent by secured party to debtor, while word "sent" implies notice sent by mail, all that it actually requires is actual or constructive receipt of notice. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Local newspaper publication a week before sale, with copy of publication being mailed to defendant the day after publication, constituted reasonable notification of sale within UCC § 9-504(3), even though defendant twice refused delivery of mailed notice. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

UCC § 9-504(3) requires more than a general advertisement or a reasonable expectation on the part of the debtor if the notice requirement is to be satisfied. People v. Brown, 131 Ill. App. 2d 717, 263 N.E.2d 603 (3d Dist. 1970).

Although only reasonable notification of the time after which a private sale will be made is required, oral notice of a sale to the highest bidder without the specification of any time cannot be said to constitute reasonable notice. Barker v. Horn, 245 Ark. 315, 432 S.W.2d 21 (1968).

The Code is silent as to the form of the notice of foreclosure of the collateral and does not state that it must be in writing, or whether it should be given by hand or by registered mail. Third Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

9. —Mailing.

Where secured party mailed notice to debtor on Wednesday of intention to dispose of collateral by private sale the following Monday, such notice was not commercially reasonable under UCC § 9-504(3) as it did not provide debtor minimum of three business days to arrange to protect interest in collateral. First Nat'l Bank v. Rose, 197 Neb. 392, 249 N.W.2d 723 (1977). But see Old Mill Toyota, Inc. v. Schroder, 3 N.C.A. 953 (Neb. App. 1993).

Bank dealt with collateral securing promissory note in commercially reasonable manner, where, after defendant had paid only five monthly installments on note, bank sent notice, which met requirements of UCC § 9-504(3), to defendant by registered mail stating that collateral would be sold at public sale, and thereafter proceeded with commercially reasonable public sale. Bank of Josephine v. Hopson, 516 S.W.2d 339 (Ky. 1974).

Conditional seller's notification by certified mail to buyer or his intention to resell repossessed truck was sufficient, and fact that buyer had no actual knowledge of resale is immaterial. Hudspeth Motors, Inc. v. Wilkinson, 238 Ark. 410, 382 S.W.2d 191 (1964), but see, Stimson Tractor Co. v. Heflin, 257 Ark. 263, 516 S.W.2d 379 (1974).

Assignee of security agreement covering conditional sale of auto used certified mail, return receipt requested, to give maker of agreement notice of impending sale; held, this was reasonable notice, notwithstanding maker's testimony disclaiming receipt or knowledge of notice. Steelman v. Associates Disct. Corp., 121 Ga. App. 649, 175 S.E.2d 62 (1970).

10. —Mailing; undelivered or unclaimed.

Secured party did not satisfy notice requirements of California version of UCC § 9-504(3), and was therefore precluded from recovering deficiency judgment from debtor, where secured party mailed certified letter addressed to debtor, return receipt requested, where notice was returned unclaimed before sale, and where secured party made no further attempt to notify debtor, although its officers knew his whereabouts and had business dealings with him through branch office. In re Carter, 511 F.2d 1203 (9th Cir. Cal. 1975).

Where (1) secured party, on debtor's default in making payments on car, obtained document from debtor in which debtor waived notice of secured party's intended sale of car, (2) secured party, on October 12, 1976, sent letter to debtor by certified mail advising debtor that he could redeem car before such sale, (3) on learning that letter had not been received by debtor, secured party sent debtor second letter on October 19, 1976, which justified debtor's belief that he had until October 29, 1976 to redeem car, and (4) secured party sold car on October 25, 1976, court held (1) that UCC § 9-501(3)(b) prohibited waiver of notice to debtor, which is required by UCC § 9-504(3), of intended sale of car, (2) that even if it could be assumed, despite prohibition contained in UCC § 9-501(3)(b), that debtor had waived his right to such notice, secured party's attempted sending of notice to debtor by certified mail on October 12, 1976 operated as an abandonment of such waiver, (3) that such abandonment was reinforced by secured party's second notice to debtor on October 19, 1976, and (4) that debtor had right to rely on statements in second notice that he could redeem car until October 29, 1976. McKee v. Mississippi Bank & Trust Co., 366 So. 2d 234 (Miss. 1979).

Where (1) after lessee's default, lessor repossessed collateral (leased forklift) and pursuant to UCC § 9-504(3) sent debtor certified letter of notice to address listed on leasing agreement that collateral would be sold, and (2) such letter was marked "unclaimed" and returned to leasor, lessee in action for deficiency judgment after sale of collateral could not successfully contend, in light of UCC § 1-201(26) concerning what constitutes giving of notice and § 1-201(38) concerning sending notice by mail, that lessee was required to receive such notice, and that if it did not receive it, no deficiency judgment could be awarded. MFT Leasing v. Fillmore Prods., Inc., 579 P.2d 924 (1978).

Sufficient notice of private sale of collateral is given under UCC § 9-504(3) when creditor takes such steps as are reasonably required to inform debtor in ordinary course, whether or not debtor actually receives such notice. Lloyd's Plan, Inc. v. Brown, 268 N.W.2d 192 (Iowa 1978).

Evidence failed to determine with certainty that reasonable notification required by UCC § 9-504(3) of sale of collateral was given to debtor where creditor testified that notice allegedly given was contained in letter sent by certified mail that was returned unclaimed, debtor testified that he did not receive such letter, and evidence did not show whether letter was returned before or after sale. Citizen & S. Nat'l Bank v. Morgan, 142 Ga. App. 337, 235 S.E.2d 767 (1977).

In suit for deficiency judgment against purchaser of boat and trailer who defaulted in making payment under retail instalment contract reserving security interest in seller, seller was not entitled to summary judgment where notice of private sale of security was sent to debtor by registered mail and was returned "unclaimed," because debtor is entitled to "reasonable notification" under UCC § 9-504(3) to protect his interests at sale or to redeem under UCC § 9-506 prior to sale; duty of good faith imposed under UCC § 1-203 and defined by UCC § 1-201(19) was not satisfied where notice was sent under UCC § 1-201(38) almost 4 months before sale was held and secured creditor was not entitled to summary judgment without showing of whether notice was returned prior to or after sale. Geohagan v. Commercial Credit Corp., 130 Ga. App. 828, 204 S.E.2d 784 (1974).

Where finance company's registered letter addressed to conditional buyer which purported to give notice of the time, place, and terms of sale of repossessed automobile was returned undelivered, and finance company made no further effort to give the notice required by subsection (3) although it had information as to where the buyer's parents lived and where he was employed, the provisions of the subsection with respect to notice were not complied with, and the sale of the automobile was commercially unreasonable. Mallicoat v. Volunteer Fin. & Loan Corp., 57 Tenn. App. 106, 415 S.W.2d 347 (1966).

11. Form.

The Code is silent as to the form of the notice of foreclosure of the collateral, and does not state that it must be in writing. Third Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

12. Sufficiency.

Where (1) certified letters were mailed to debtor and each guarantor advising them that collateral had been repossessed, that they had right of redemption, and that if such right were not exercised by specified date, collateral would be sold, and (2) where such letters were followed by other letters informing debtor and guarantors that collateral had been advertised for sale, court held that such notice of sale of collateral was commercially reasonable and sufficient under UCC § 9-504(3) and UCC § 1-201(26). Cessna Fin. Corp. v. Meyer, 575 P.2d 1048 (Utah 1978).

Jury finding that creditor had conducted public sale of collateral in commercially reasonable manner required by UCC § 9-504(3) was supported by evidence which showed (1) that creditor had advertised sale for two days in Houston, Texas daily newspaper, (2) that it had mailed notices to 19 used-equipment companies, (3) that prospective purchaser from Oklahoma City, Oklahoma, who received one of the mailed notices, had come to Houston and inspected the property, (4) that all but two of the used-equipment companies notified by the creditor had done business (5) debtor produced no evidence that it did not understand or could not deduce place of sale from notice and also failed to show that it had been prejudiced by omission of "Houston, Texas" from address of place of sale. Siboney Corp. v. Chicago Pneumatic Tool Co., 572 S.W.2d 4 (Tex. Civ. App. 1978), ref. n.r.e (Dec. 6, 1978).

Notice to debtor of secured party's proposed disposition of collateral is sufficient under UCC § 9-504(3) where (1) secured party notified debtor that pursuant to UCC § 9-504 and § 9-506, secured party would sell collateral within ten days; (2) such notice also informed debtor about manner of sale, distribution of sales proceeds, and accounting to debtor for any surplus or the seeking of any deficiency; and (3) notice granted debtor ten days to redeem collateral by satisfying indebtedness defaulted on. Georgia Grain & Stillage Co. v. First Ga. Bank, 142 Ga. App. 709, 236 S.E.2d 913 (1977).

13. —Public sale.

Where (1) creditor, after debtor's default in making payments on two trucks, sent debtor notice in April, 1975 that trucks would be sold at private sale after time specified in May, 1975, (2) trucks were sold at time specified in such notice, but sale was public and not private, (3) creditor purchased trucks at such sale for amount equal to expenses of conducting sale, and (4) creditor, nine months later, sold trucks at private sale and sued debtor for deficiency judgment for unpaid balance due on trucks, court held (1) that first sale of trucks, which was public sale, was invalid under UCC § 9-504(3) because notice thereof did not specify time and place of sale, (2) second sale of trucks nine months later at private sale was valid because notice thereof, which had been sent to debtor in April, 1975, constituted reasonable notification under UCC § 9-504(3), provided that test of commercial reasonableness of such sale could be met, and (3) even if at trial of case it should be found that creditor had not conducted sale in commercially reasonable manner, creditor was not thereby deprived of right to deficiency judgment, since debtor under UCC § 9-507(1) could offset any loss sustained as result of creditor's failure to conduct sale in commercially reasonable manner against any deficiency judgment that creditor might obtain. Associates Fin. Servs. Co. v. DiMarco, 383 A.2d 296 (Del. Super. 1978).

In action by buyer for damages for wrongful sale of repossessed automobile against dealer who resold vehicle and bank which had security interest therein, where buyer requested bank employee, while employee was repossessing vehicle on June 9, 1975, to hold vehicle for ten days to allow buyer to redeem it, and employee agreed to such request and orally informed dealer of buyer's intention to redeem; where bank on June 9, 1975, notified buyer by letter that efforts to resell vehicle would commence on June 19, 1975, and would continue until it was resold; where such letter also notified buyer of his right to redeem vehicle before its resale, but did not indicate where resale would take place; and where buyer received such letter on June 14, 1975, which was date on which dealer resold vehicle to third person, (1) bank as secured party at time of default, repossession, and resale violated its duty under UCC § 9-504(3) to give buyer reasonable notice of time and place of such resale and thus could have been found by jury to be liable under UCC § 9-507(1) for not effecting "commercially reasonable" disposition of vehicle under UCC § 9-504(3); (2) bank also could have been found liable for violation of UCC § 9-506 for not permitting buyer to redeem vehicle; and (3) jury could further have found that connection existed between bank and dealer in their prior course of dealing and their conduct in present transaction which demonstrated community of action and interest that would render both liable to buyer, particularly in view of evidence sufficient to show that bank had adopted dealer's actions by accepting dealer's check, based on proceeds of resale, for full payment of balance owed by buyer on vehicle. Wells v. Central Bank, 347 So. 2d 114 (Ala. Civ. App. 1977).

14. —Private sale.

Where (1) creditor, after debtor's default in making payments on two trucks, sent debtor notice in April, 1975 that trucks would be sold at private sale after time specified in May, 1975, (2) trucks were sold at time specified in such notice, but sale was public and not private, (3) creditor purchased trucks at such sale for amount equal to expenses of conducting sale, and (4) creditor, nine months later, sold trucks at private sale and sued debtor for deficiency judgment for unpaid balance due on trucks, court held (1) that first sale of trucks, which was public sale, was invalid under UCC § 9-504(3) because notice thereof did not specify time and place of sale, (2) second sale of trucks nine months later at private sale was valid because notice thereof, which had been sent to debtor in April, 1975, constituted reasonable notification under UCC § 9-504(3), provided that test of commercial reasonableness of such sale could be met, and (3) even if at trial of case it should be found that creditor had not conducted sale in commercially reasonable manner, creditor was not thereby deprived of right to deficiency judgment, since debtor under UCC § 9-507(1) could offset any loss sustained as result of creditor's failure to conduct sale in commercially reasonable manner against any deficiency judgment that creditor might obtain. Associates Fin. Servs. Co. v. DiMarco, 383 A.2d 296 (Del. Super. 1978).

Where seller of automobile repossessed after buyer breached contract, repaired automobile and placed it on lot for sale in ordinary course of business as automobile dealer, such sale was a private one, and not one made at auction or by way of competitive bidding; thus, notice requirements of UCC § 9-504(3) were satisfied by notice to buyer of time after which collateral was to be sold. Contois Motor Co. v. Saltz, 198 Neb. 455, 253 N.W.2d 290 (1977).

In action by bank to recover balance due on promissory note signed by debtor to secure purchase of automobile, trial court erred in directing verdict for bank where bank admittedly did not comply with notice requirements of UCC § 9-504 in telling debtor only that car was to be sold at private sale without mention of specific date, and bank's assertion that debtor's statement that he knew car had been repossessed and debtor's surrender of keys to seller of automobile amounted to admission that debtor had notice that after that time car was subject to private sale did not justify court's ruling that debtor was estopped from asserting lack of notice where testimony conflicted as to whether debtor was told of sale and signed over title before or after sale occurred. Wheeless v. Eudora Bank, 256 Ark. 644, 509 S.W.2d 532 (1974).

15. —Actual notice.

In action to recover deficiency judgment for breach of retail instalment contract for purchase of second-hand front end loader, following resale of loader after buyer's default, where seller gave buyer oral notice of intention to place loader back on its lot and offer it for sale, and where buyer knew where loader was located, why it was being sold and had three months to find buyer or bid on it himself, buyer's actual knowledge of expected sale was sufficient to constitute reasonable notice under UCC § 9-504(3) as sale was private sale of collateral in normal course of seller's business. Bondurant v. Beard Equip. Co., 345 So. 2d 806 (Fla. App. 1977).

The receipt or acquisition of actual knowledge within the time a properly sent notification could have arrived amounts to compliance with the requirement of UCC § 9-504(3), even absent a writing. Crest Inv. Trust, Inc. v. Alatzas, 264 Md. 571, 287 A.2d 261 (1972).

Debtor's knowledge that repossessed auto would be sold to satisfy indebtedness did not constitute reasonable notification of time after which creditor could make private sale of auto. Nelson v. Monarch Inv. Plan, Inc., 452 S.W.2d 375 (Ky. 1970).

16. —Constructive notice.

The requirement that a guarantor of a secured party receive the same notice of sale of the collateral as the debtor is entitled to receive (Uniform Commercial Code, § 9-504, subd [3]), is satisfied, where the notice of the dispositional sale of the corporate debtor's assets can properly be imputed to defendant guarantor by reason of her position as the secretary of the small, closely owned and family-operated corporation whose indebtedness she guaranteed. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Notice to corporation president of private sale of repossessed equipment could not be imputed to corporate officers who were accommodation indorsers of note where president was also officer of repossessing equipment supplier, and where repossessor, although aware of this probability of conflict of interest, had not taken "such steps as may be reasonably required to inform the other party in the ordinary course". T & W Ice Cream, Inc. v. Carriage Barn, Inc., 107 N.J. Super. 328, 258 A.2d 162 (L. Div. 1969).

17. Parties entitled to notice.

An automobile dealer who sells a conditional sales contract to a bank and at the same time executes an assignment which provides that in the event of default he will repurchase the contract for the unpaid balance is a debtor of the bank as defined in ¶ (d) of subd (1) of § 9-105, and where the bank, after repossession, sells the security at private sale without notice to the dealer, subd (3) of this section is not complied with. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

Where (1) seller sold computer system under purchase agreement which provided that seller would retain security interest in goods until balance of purchase price was paid, (2) buyer, after taking possession of goods on January 14, 1975, advised seller on January 30, 1975 to repossess them for seller's protection because buyer was in financial difficulty, and (3) seller, after repossessing goods on February 3, 1975, subsequently returned part of them to seller's new-equipment inventory without separately identifying such goods from goods already in inventory and also, without notifying buyer, resold some of the repossessed goods to third persons, court held (1) that seller was limited to remedy of security-interest holder under UCC § 9-504, which governed seller's right to repossess the goods in suit, dispose of them, and apply their proceeds, and (2) that because seller, on reselling some of the goods after their repossession, had failed to give buyer notice of sale required by UCC § 9-504(3), seller under California construction of UCC § 9-504(3) could not recover deficiency on unpaid purchase price from buyer. Nixdorf Computer, Inc. v. Jet Forwarding, Inc., 579 F.2d 1175 (9th Cir. Cal. 1978).

Where assignee (secured party) of equipment lease of drilling machine, on default of colessees, repossessed machine and, without giving written notice of any public or private sale thereof to either colessees or lease's guarantors, sold machine more than one year after repossessing it, assignee was not entitled to deficiency judgment because of its failure to act in good faith and in commercially reasonable manner under UCC § 9-504(3). National Equip. Rental, Ltd. v. Holes, Inc., 460 F. Supp. 118 (C.D. Cal. 1978), aff'd, 642 F.2d 456 (9th Cir. Cal. 1981).

In action by debtor for creditor's wrongful repossession and conversion of collateral, evidence of value of collateral at time it was sold, where creditor did not give debtor notice of sale required by UCC § 9-504(3), was relevant because it went toward proof of conversion. Ott v. Fox, 362 So. 2d 836 (Ala. 1978).

Sale of collateral at public auction was void as to debtor where debtor received no notice thereof, as required by UCC § 9-504(3), and waiver of such notice was prohibited by UCC § 9-501(3)(b). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Where bank loaned debtor money to buy airplanes and loans were secured by such airplanes, and where bank repossessed airplanes because of debtor's failure to make payment, sold them at private sale, and sued guarantors of loans for deficiency judgment under guaranty agreement which unambiguously contained waiver by guarantors that bank could sell or release collateral (airplanes) without notice to guarantors and without affecting their absolute liability, (1) policies underlying UCC § 9-504(3), requiring principal debtor to be given notice of creditor's sale of collateral, would be interpreted as giving guarantor defense to deficiency claim where secured party failed to give principal debtor statutory notice of such sale; (2) such defense was waived by defendant guarantors by express provision in guaranty agreement; and (3) such waiver of notice under UCC § 9-504(3) was not specifically barred by UCC § 9-501(3), since

UCC § 9-501(3) applies only to debtors and does not by its terms mandate holding that guarantor is precluded by such section from waiving defense of lack of notice to debtor. First Nat'l Park Bank v. Johnson, 553 F.2d 599 (9th Cir. Mont. 1977).

Automobile "lease agreement" was, in fact, secured transaction within meaning of Article 9 of Uniform Commercial Code where agreement was of indefinite duration and, at its inception, passed all risks and indicia of ownership of vehicle to purported lessee, in that lessee not only insured against any loss to leasing company of its capitalized cost, but after 26 months, was entitled to any surplus funds if and when car was sold, and where at end of 56 months, car would, at option of leasee, pass to her at no cost, since monthly installment payments would have equaled capitalized cost of vehicle. Right of debtor to receive notice of intended disposition of collateral after default may not be limited under UCC § 9-501(1), (3)(b), and inasmuch as leasing company failed to comply with notice provision of UCC § 9-504(3) before selling repossessed vehicle, it was precluded from recovering deficiency judgment and could only recover sums owed to it prior to repossession as well as repossession charges. Avis Rent-A-Car Sys. v. Franklin, 82 Misc. 2d 66 (1975).

Plaintiff was entitled to notification of public sale of collateral in which both plaintiff and bank had security interest, and bank was therefore liable for any damages which plaintiff sustained by bank's failure to provide such notice, where property described in plaintiff's financing statement reasonably identified collateral, and where such financing statement was therefore sufficient to put bank on notice of plaintiff's claim. Stephens v. Bank of Camilla, 133 Ga. App. 210, 210 S.E.2d 358 (1974), aff'd, 234 Ga. 293, 216 S.E.2d 71 (1975).

Where the corporate maker dishonors the note, a corporate officer who had signed as indorser becomes a debtor entitled to notice under UCC § 9-504. Third Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

18. —Accommodation parties.

Although bank was permitted to dispose of repossessed automobile without judicial process or notice to co-signer of installment sales contract, bank was not entitled under UCC § 9-504(3) to deficiency judgment against co-signer, where bank failed to give notice to co-signer of intended sale of repossessed automobile. Washington v. First Nat'l Bank, 332 So. 2d 644 (Fla. App. 1976).

Secured party was not entitled to recover deficiency judgment from cosigner of note where collateral securing note was repossessed and sold without notice to cosigner. First State Bank v. Northrop, 519 S.W.2d 161 (Tex. Civ. App. 1975).

Secured creditor who took possession of collateral, solicited bids, and sold it at private sale was not entitled to recover deficiency judgment against accommodation maker of note where no notice of private sale was given to accommodation party prior to completion of sale as required by UCC § 9-504(3); accommodation maker who signed note to enable makers of note to secure loan from secured party was debtor within meaning of UCC § 9-504(3), and was, thus, entitled to notice of sale. Bank of Gering v. Glover, 192 Neb. 575, 223 N.W.2d 56 (1974).

Accommodation indorsers are "debtors", entitled to notice from secured party of private sale of ice cream business equipment which was collateral on promissory note. T & W Ice Cream, Inc. v. Carriage Barn, Inc., 107 N.J. Super. 328, 258 A.2d 162 (L. Div. 1969).

19. —Guarantor.

Where assignee (secured party) of equipment lease of drilling machine, on default of colessees, repossessed machine and, without giving written notice of any public or private sale thereof to either colessees or lease's guarantors, sold machine more than one year after repossessing it, assignee was not entitled to deficiency judgment because of its failure to act in good faith and in commercially reasonable manner under UCC § 9-504(3). National Equip. Rental, Ltd. v. Holes, Inc., 460 F. Supp. 118 (C.D. Cal. 1978), aff'd, 642 F.2d 456 (9th Cir. Cal. 1981).

In creditor's action against trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

Where bank upon default of note and commercial equipment security agreement sold collateral without giving notice to guarantors, under UCC § 9-504(3) failure of secured party to give requisite notice prior to sale or disposition of collateral precluded action for deficiency against guarantor. Barnett v. Barnett Bank, 345 So. 2d 804 (Fla. App. 1977), but see Ayares-Eisenberg Perrine Datsun v. Sun Bank, 455 So. 2d 525 (Fla. Ct. App. 1984).

A guarantor of payment of a secured party is entitled to the same notice of sale of the collateral as the debtor is entitled to (Uniform Commercial Code, § 9-504, subd [3]) since a guarantor is a "debtor" within the meaning of section 9-105 (subd [1], par [d]) of the Uniform Commercial Code which does not require the "debtor" to be the owner or have rights in the collateral. The debtor is only required to be an "obligor in any provision dealing with the obligation". It is imperative for the guarantor to receive notice of the dispositional sale in order to protect his right to reduce his potential liability at the sale. Requiring the secured party to give notice to the guarantor of the disposition of the collateral will not cause the creditor to suffer any prejudice or impose an undue burden. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Guarantor is "debtor" within meaning of UCC § 9-105(1)(d) and § 9-504(3), and thus is entitled to notice of disposition of collateral. Chase Manhattan Bank v. Natarelli, 93 Misc. 2d 78 (1977).

Although plaintiff was not guarantor of loan to corporation, having been released from personal liability on loan, where plaintiff's stock still secured corporate debt and, in event of deficiency, stock was subject to sale, plaintiff was "debtor" to whom notice was owed under UCC § 9-504(3); although creditor failed to give notice prior to sale of collateral, creditor was entitled to collect deficiency if he could prove market value of collateral. Rushton v. Shea, 423 F. Supp. 468 (D. Del. 1976).

Guarantors of promissory note secured by collateral were "debtors" within meaning of UCC §§ 9-105(1)(d) and 9-504(3) and were entitled to reasonable notification prior to disposition of collateral by secured party; failure to provide such notice precluded entry of deficiency judgment in action by secured party against guarantors. Hepworth v. Orlando Bank & Trust Co., 323 So. 2d 41 (Fla. App. 1975).

Lease of restaurant equipment did not constitute security agreement and, hence, guarantors of lessee's performance of terms of lease were not entitled to notice required by UCC § 9-504(3) where leased equipment was sold at private sale after lessee failed to pay rent and after demand for payment from guarantors had been ignored. Diaz v. Goodwin Bros. Leasing, Inc., 511 S.W.2d 680 (Ky. 1974).

20. —Owner of collateral.

In creditor's action against trustees of dissolved corporation to foreclose mortgage on real property given by such corporation as collateral for note, where (1) complaint alleged that trustees had executed notes as indorsers guaranteeing payment of all of corporation's obligations to plaintiff, (2) after entry of final judgment of foreclosure and sale of realty securing corporation's note, such realty was sold without notice to trustees, (3) plaintiff thereafter filed motion for deficiency judgment against trustees when sale did not fully discharge debt owed to it, and (4) notes given by trustees expressly provided that Uniform Commercial Code applied thereto and that plaintiff would give principal debtor (dissolved corporation) reasonable notice of time and place of any public or private sale of the collateral (realty) for the corporation's note, court (1) affirmed trial court's denial of plaintiff's motion for deficiency judgment because of plaintiff's failure to comply with UCC § 9-504(3), which provides that notice of sale of collateral must be given to debtor prior to such sale, and (2) stated that no basis existed for distinguishing between guarantor of note, after default of the principal debtor (dissolved corporation in present case), and a "debtor" under UCC § 9-504(3), insofar as entitlement to notice before sale of collateral is concerned. Southeast First Nat'l Bank v. LeGrace Co., 363 So. 2d 128 (Fla. App. 1978), cert. dismissed, 362 So. 2d 1056 (Fla. 1978).

Since UCC § 9-504(3), requiring secured party to send debtor reasonable notification of sale of collateral, deals with both collateral and the underlying obligation, term "debtor" in UCC § 9-504(3) includes both owner of collateral and obligor when they are not the same person. Commercial Disct. Corp. v. Bayer, 57 Ill. App. 3d 295, 372 N.E.2d 926, 5 A.L.R.4th 1283 (1st Dist. 1978).

Notice requirement of UCC § 9-504(3) refers to collateral, not to obligation, and "debtor" entitled to notice by that provision is owner of collateral; thus, maker of note was not entitled to notice of sale where automobile given as security for note was owned by his cosigner. New Haven Water Co. Emp. Credit Union v. Burroughs, 6 Conn. Cir. Ct. 709, 313 A.2d 82 (1973).

21. —Waiver.

Where (1) plaintiff and his wife purchased used mobile home, (2) plaintiff's father-in-law cosigned security agreement and note as accommodation maker, (3) plaintiff defaulted on payments, (4) plaintiff's father-in-law, with secured party's consent, obtained possession of home, paid off balance due on note, and made repairs on home, (5) secured party obtained repossession title in its name, released security agreement, and transferred repossession title to plaintiff's father-in-law without notifying plaintiff, who was in jail, of either the account delinquency or the subsequent transfer of title, and (6) after plaintiff's release from jail, plaintiff's father-in-law sold home with plaintiff's consent, but did not give accounting of sale or proceeds therefrom to plaintiff, court held (1) that plaintiff did not waive right to notice of disposition of home under UCC § 9-504(3), since UCC § 9-501(3)(b) specifically states that such right cannot be waived; (2) plaintiff's father-in-law, as accommodation maker of note, did not fall within scope of UCC § 9-504(5), dealing with transfers of collateral that are not sales and thus do not require notice to debtor; (3) UCC § 9-504(5) did not contemplate complete extinguishment of plaintiff's right to home, as was done in present case by secured party's transfer of repossession title to plaintiff's father-in-law; and (4) under UCC § 9-507(1) and UCC § 1-103, plaintiff was entitled to damages for conversion of home on basis of benefit to defendant wrongdoers, rather than on basis of allowing full value of home as enhanced by wrongdoers. Western Nat'l Bank v. Harrison, 577 P.2d 635 (Wyo. 1978).

Sale of collateral at public auction was void as to debtor where debtor received no notice thereof, as required by UCC § 9-504(3), and waiver of such notice was prohibited by UCC § 9-501(3)(b). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Loan contract which contained provision for waiver of notice of sale of repossessed collateral in violation of UCC § 9-501(3)(b) and § 9-504(3) was not completely void, but merely contained unenforceable provision, where defendant lender did not foreclose on or sell any property of plaintiff debtor and waiver provision was not in any way involved in the litigation between the parties. Lowe v.

Termplan, Inc., 144 Ga. App. 671, 242 S.E.2d 268 (1978).

Where bank loaned debtor money to buy airplanes and loans were secured by such airplanes, and where bank repossessed airplanes because of debtor's failure to make payment, sold them at private sale, and sued guarantors of loans for deficiency judgment under guaranty agreement which unambiguously contained waiver by guarantors that bank could sell or release collateral (airplanes) without notice to guarantors and without affecting their absolute liability, (1) policies underlying UCC § 9-504(3), requiring principal debtor to be given notice of creditor's sale of collateral, would be interpreted as giving guarantor defense to deficiency claim where secured party failed to give principal debtor statutory notice of such sale; (2) such defense was waived by defendant guarantors by express provision in guaranty agreement; and (3) such waiver of notice under UCC § 9-504(3) was not specifically barred by UCC § 9-501(3), since UCC § 9-501(3) applies only to debtors and does not by its terms mandate holding that guarantor is precluded by such section from waiving defense of lack of notice to debtor. First Nat'l Park Bank v. Johnson, 553 F.2d 599 (9th Cir. Mont. 1977).

Proper interpretation of UCC § 9-501(3)(b), which is in accordance with policy of UCC § 9-504 to protect rights of debtor, is that nonwaiver provision of UCC § 9-501(3) applies both before and after debtor's default. Thus, UCC § 9-501(3)(b) does not allow waiver by debtor of his right under UCC § 9-504(3) to reasonable notification of private sale of collateral after debtor's default on underlying obligation. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

Foreclosure sale of Mack trucks did not come within notification exception of UCC § 9-504 as to goods of type customarily sold on "recognized market"; recognized market within meaning of UCC is most restrictive and might well be stock market or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where prices paid in actual sales of comparable property are currently available by quotation. Furthermore, debtor did not waive right to notice of private sale by requesting creditor to repossess trucks to stop interest accruing on notes; under UCC §§ 9-501 and 9-504 waiver will be permitted only if debtor signs statement after default renouncing or modifying his right to notification of sale. O'Neil v. Mack Trucks, Inc., 533 S.W.2d 832 (Tex. Civ. App. 1975), rev'd, 542 S.W.2d 112 (Tex. 1976), mandate recalled and reissued, 551 S.W.2d 32 (Tex. 1977).

Under UCC §§ 9-504 and 9-507(2), where individual's guaranty of corporation's demand notes specifically authorized sale of collateral without notice to or further assent from guarantors, sale of collateral was approved by corporation's referee in bankruptcy and no objection was made by trustee in bankruptcy or guarantor at time of sale, naked assertion of impropriety in sale could not overcome presumption that sale of collateral was effectuated in commercially reasonable fashion. First Nat'l City Bank v. Cooper, 50 A.D.2d 518 (1st Dep't 1975).

22. Exceptions to notice requirement.

Code section requiring secured party to give reasonable notification to debtor of its intention to dispose collateral is made inoperative by Code § 9-501(4) with respect to watered stock foreclosed as part of real estate security. Kinoshita v. North Denver Bank, 181 Colo. 183, 508 P.2d 1264 (1973).

Forty-one head of cattle were not "perishable" or did not threaten to "decline speedily in value" within two weeks from date at which sale was scheduled until date sale was held, so as to excuse "reasonable notification" to junior lienholder as to time and place of sale as required by UCC § 9-504(3). United States v. Mid-States Sales Co., 336 F. Supp. 1099 (D. Neb. 1971).

Failure to give notice to conditional buyer as required by paragraph (3) of this section was not excused in the absence of evidence that a repossessed second-hand pickup truck would threaten to decline speedily in value or was a type of property customarily sold on a recognized market.

Abbott Motors, Inc. v. Ralston, 28 Mass. App. Dec. 35 (1964).

23. —Sale on recognized market.

Bank which as secured creditor purchased collateral at private sale following debtor's default, but which did not comply with requirement of UCC § 9-504(3) that collateral purchased at private sale must be of type that is customarily sold in recognized market or is subject of widely distributed standard-price quotations, was not entitled to recover deficiency that existed after liquidation of collateral. Jackson State Bank v. Beck, 577 P.2d 168 (Wyo. 1978).

Creditor's default sale of tractor was not commercially reasonable as required by UCC § 9-504(3) where debtors had no notice other than posting of notice of sale at courthouse and where there was no evidence that tractor was sold in any recognized market for used tractors, that it was sold at price current on any such market, or that it was sold in conformity with reasonable commercial practices among tractor dealers; however, creditor was not absolutely barred from recovering deficiency judgment against debtor in any amount; rather debt was to be credited with amount that reasonably should have been obtained through sale conducted in reasonably commercial manner according to UCC and creditor's failure to dispose of collateral as required by Code raised presumption that collateral was worth at least amount of debt, which placed upon creditor burden of overcoming such presumption by proving market value of collateral by evidence other than resale price. Hodges v. Norton, 29 N.C. App. 193, 223 S.E.2d 848 (1976).

Foreclosure sale of Mack trucks did not come within notification exception of UCC § 9-504 as to goods of type customarily sold on "recognized market"; recognized market within meaning of UCC is most restrictive and might well be stock market or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where prices paid in actual sales of comparable property are currently available by quotation. Furthermore, debtor did not waive right to notice of private sale by requesting creditor to repossess trucks to stop interest accruing on notes; under UCC §§ 9-501 and 9-504 waiver will be permitted only if debtor signs statement after default renouncing or modifying his right to notification of sale. O'Neil v. Mack Trucks, Inc., 533 S.W.2d 832 (Tex. Civ. App. 1975), rev'd, 542 S.W.2d 112 (Tex. 1976), mandate recalled and reissued, 551 S.W.2d 32 (Tex. 1977).

Repossessed automobiles are not collateral of type sold on recognized market within meaning of UCC provision requiring creditor to give debtor notice of sale of repossessed collateral. Community Mgt. Ass'n v. Tousley, 32 Colo. App. 33, 505 P.2d 1314 (1973).

A used automobile is not collateral of a type customarily sold on a recognized market, and where it is sold by the holder of a security interest, notice to the debtor is not dispensed with. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

The debtor is not entitled to notice of the foreclosure sale of the collateral where it is of a nature customarily sold on a recognized market. Third Nat'l Bank & Trust Co. v. Stagnaro, 25 Mass. App. Dec. 58 (1962).

24. —"Recognized market."

A "recognized market," as the term is used in subdivision (3) of this section might well be a stock or commodity market, where sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where the prices paid in actual sales of comparable property are currently available by quotation; and notice to the debtor of such sales is dispensed with only because the debtor would not be prejudiced by the want of notice. Norton v. National Bank of Commerce, 240 Ark. 143, 398 S.W.2d 538 (1966), overruled on other grounds, First State Bank v. Hallett, 291 Ark. 37, 722 S.W.2d 555 (1987).

"Recognized market" refers to widely recognized stock and commodity exchanges which are regulated in some substantial way, but does not include automobile auctions; so that in absence of secured creditor's giving required notice of sale of repossessed automobile, creditor forfeits his right to any deficiency against any debtor not so notified. Turk v. St. Petersburg Bank & Trust Co., 281 So. 2d 534 (Fla. App. 1973).

25. Evidence of burden of proof.

Although North Carolina UCC § 9-504(3) does not address the question of burden of proof, a creditor, when suing for a deficiency judgment, nevertheless has the burden of proving that the disposition of the collateral was conducted in a commercially reasonable manner. Likewise, in an action by a creditor to obtain a deficiency judgment, the burden of proving that notice was properly sent by the creditor to the debtor rests with the creditor. North Carolina Nat'l Bank v. Burnette, 297 N.C. 524, 256 S.E.2d 388 (1979).

Although secured party under UCC § 9-504(3) need not prove debtor's receipt of notice of sale of collateral, secured party must show when notice was sent in order to permit determination to be made as to whether notice was sent within commercially reasonable time prior to date after which private sale of collateral would be made. Commercial Disct. Corp. v. Bayer, 57 Ill. App. 3d 295, 372 N.E.2d 926, 5 A.L.R.4th 1283 (1st Dist. 1978).

Secured creditor who has liquidated his security may maintain action for deficiency judgment, but such secured creditor has burden to prove that due notice of sale as provided by law was given to debtor and that sale was commercially reasonable. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

In action brought by secured creditor against maker and guarantor of note to recover deficiency alleged to be due on note after secured creditor sold collateral, summary judgment in favor of secured creditor was precluded by existence of factual issues concerning propriety of notice of sale and whether sale was conducted in commercially reasonable manner. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Secured party who (1) pursuant to UCC § 9-504(1) sold collateral (truck tractor) at private sale for $1,000, although debtor had borrowed $25,000 from secured party to buy collateral, (2) did not give debtor notice of sale required by UCC § 9-504(3), and (3) allegedly violated UCC § 9-504(3) by conducting sale in commercially unreasonable manner could maintain action against debtor and guarantor of debtor's note for deficiency judgment on debtor's obligation. However, in such case, secured party had burden of proving that due notice of sale had been given to debtor and that sale had been conducted in commercially reasonable manner. Furthermore, even if secured party should fail to present such proof at the trial, he could still recover deficiency judgment by proving amount of debt, fair value of collateral, and resulting deficiency. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Compliance with UCC § 9-504(3) for notification as to disposition of collateral security is condition precedent to secured creditor's right to recovery under UCC § 9-507(1) of any deficiency between sale price of collateral and amount of unpaid balance; burden is on secured party to plead and prove compliance with statutory requirement of notice and of reasonableness of notice. Herman Ford-Mercury, Inc. v. Betts, 251 N.W.2d 492 (Iowa 1977).

Secured parties failed to meet burden of proving compliance with "reasonable notification" requirement of UCC § 9-504(3) where secured parties sent notice of sale only to one out of two debtors by letter, on May 25, 1972, informing him that sale would be held on June 2, 1972, and where, before sale date, debtors moved to temporarily restrain sale to protect their interest in collateral, but secured parties conducted sale before court's order could be served. Furthermore, sale was not commercially reasonable where only people who attended sale were secured party and one of his former employees, where there was no evidence that secured parties publicized sale in any manner or otherwise took steps to insure best price possible would be obtained for benefit of debtor, secured party placed only bid at sale and purchased collateral for $100, and where, subsequently, secured parties sold collateral to third party for $10,000. Although it would be presumed that collateral had fair market value equal to amount of debt and no deficiency would be permitted unless creditor produced evidence to establish reasonable amount that collateral would have sold for at proper sale, and although secured parties had failed to conduct commercially reasonably sale with reasonable notification to debtors, there was substantial evidence that collateral had fair market value of $10,000 and, thus, secured parties were entitled to deficiency judgment in amount equal to difference between balance owed on promissory note and fair market value of collateral. Levers v. Rio King Land & Inv. Co., 93 Nev. 95, 560 P.2d 917 (1977).

In action by noteholder for deficiency after sale of collateral, noteholder had burden of proving defendant was given proper notice of sale within meaning of UCC § 9-504(3). Notice was misleading, inaccurate and unreasonable where automobile being sold was not present, where defendant was not given opportunity to bid, where no other potential purchasers were present, where alleged "public sale" was held in Chicago law office while collateral was located in another city, and where bids were received at undisclosed price from undisclosed persons. General Foods Corp. v. Hall, 39 Ill. App. 3d 147, 349 N.E.2d 573 (1st Dist. 1976).

In action to recover deficiency judgment from debtor and guarantor after sale of property taken by bank under security instruments, where bank disposed of property in several transactions and in some of transactions failed to give notice of sale as required by UCC § 9-504(3) and in others failed to prove reasonableness of notice, i.e., notice should be sent in such time that debtors would have minimum of three business days to arrange to protect interests, failure to give notice barred recovery of deficiency judgment. DeLay First Nat'l Bank & Trust Co. v. Jacobson Appliance Co., 196 Neb. 398, 243 N.W.2d 745 (1976). But see Howard Kool Chevrolet v. Blomstedt, 2 Neb. App. 493, 511 N.W.2d 222 (1994).

Evidence was insufficient to support finding that secured party resold automobile in violation of notice requirement of UCC § 9-504(3) where sale was actually conducted by repairman having garageman's possessory repair lien on vehicle in question, which was superior to secured party's perfected security interest under UCC § 9-310, and where evidence failed to show that repairman sold vehicle in concert with or as agent for secured party. Magnavox Ft. Wayne Employees Credit Union v. Benson, 165 Ind. App. 155, 331 N.E.2d 46 (1975).

Judgment in favor of secured creditor for reimbursement of fuel taxes paid to state board of equalization in order to obtain clear title to repossessed trucks before they were sold in satisfaction of debtor's defaulted obligation, was deficiency judgment, since taxes should have been paid out of proceeds of sale before satisfaction of debtor's underlying indebtedness. Accordingly, such judgment required reversal where creditor did not comply with requirements of UCC § 9-504(3), concerning notice of sale, in that notice to debtor did not explicitly set forth exact date, time, and place of sale, but only informed debtor that collateral would be sold at end of seven days from date of letter to debtor and could be inspected at creditor's premises, where no public sale in terms of auction was in fact conducted, and where, even if creditor had complied with notice requirements, it failed to allege or prove such compliance in its complaint. J.T. Jenkins Co. v. Kennedy, 45 Cal. App. 3d 474 (2d Dist. 1975).

Although Code does not require that secured party prove actual receipt of letter notifying debtor of sale, where secured party proved only that envelope had been sent, by introducing certified mail return receipt, and utterly failed to present any evidence as to contents of envelope, he failed to sustain his burden of proving compliance with requirements for notice of disposition. Tauber v. Johnson, 8 Ill. App. 3d 789, 291 N.E.2d 180 (1st Dist. 1972), overruled on other grounds, State Nat'l Bank v. Norwest Dodge, Inc., 108 Ill. App. 3d 376, 64 Ill. Dec. 26, 438 N.E.2d 1345 (1st Dist. 1982).

Conclusory statement that notice "went out in the normal course of business in my office as all mail does each day" is insufficient to prove "reasonable notice" under UCC § 9-504(3) without proof of customary office practice as to stamping, addressing, and posting. Leasing Assocs. v. Slaughter & Son, 450 F.2d 174 (8th Cir. Ark. 1971).

RESEARCH REFERENCES

ALR. What constitutes a "public sale." 4 A.L.R.2d 575.

Necessity and sufficiency of notice of sale to mortgagor where chattel mortgage is sought to be foreclosed without judicial proceedings by sale under power. 30 A.L.R.2d 539.

Rights and duties of parties to conditional sales contract as to resale of repossessed property. 49 A.L.R.2d 15.

Uniform Commercial Code: Burden of proof as to commercially reasonable disposition of collateral. 59 A.L.R.3d 369.

Uniform Commercial Code: Failure of secured creditor to give required notice of disposition of collateral as bar to deficiency judgment. 59 A.L.R.3d 401.

What statute of limitation applies to action for surplus of proceeds from sale of collateral. 59 A.L.R.3d 1205.

Construction of term "debtor" as used in UCC § 9-504(3), requiring secured party to give notice to debtor of sale of collateral securing obligation. 5 A.L.R.4th 1291.

What is "commercially reasonable" disposition of collateral required by UCC § 9-504(3). 7 A.L.R.4th 308.

Loss or modification of right to notification of sale of repossessed collateral under Uniform Commercial Code § 9-504. 9 A.L.R.4th 552.

Failure of secured party to make "commercially reasonable" disposition of collateral under UCC § 9-504(3) as bar to deficiency judgment. 10 A.L.R.4th 413.

Sufficiency of secured party's notification of sale or other intended disposition of collateral under UCC § 9-504(3). 11 A.L.R.4th 241.

Nature of collateral which secured party may sell or otherwise dispose of without giving notice to defaulting debtor under UCC § 9-504(3). 11 A.L.R.4th 1060.

Secured transactions: what is "public" or "private" sale under UCC § 9-504(3). 60 A.L.R.4th 1012.

UCC: value of trade-in taken on sale of collateral for purposes of computing surplus or deficiency. 72 A.L.R.4th 1128.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 534-543.

Rights and remedies of debtor; recovery from secured party for noncompliance; notice of sale not given, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:815, 9:817, 9:819.

Intervention in action by secured party to recover collateral, by owner of collateral not the debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:81.

Default; Rights and remedies of secured party; to recover deficiency following foreclosure sale, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:683.

Default; rights and remedies of secured party; sale or other disposition of collateral, 6 Am. Jur. Pl Pr Forms (Rev), Secured Transactions, Forms 9:751-9:763.

Default; Rights and remedies of debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:792.

Right of secured party to dispose of collateral after default, 19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3771 et seq.

4 Am. Jur. Proof of Facts 2d, Secured Party's Failure to Sell Collateral in Commercially Reasonable Manner, § 12 et seq. (proof that secured party's sale of repossessed collateral was not commercially reasonable).

29 Am. Jur. Proof of Facts 2d 711, Secured Transactions — Waiver of Security Interest.

35 Am. Jur. Proof of Facts 2d 517, Sufficiency of Notice of Secured Party's Proposed Disposition of Collateral.

CJS. 79 C.J.S., Secured Transactions § 153 et seq.

72 C.J.S., Pledges §§ 58, 59 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-612. Timeliness of notification before disposition of collateral.

(a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) A notification of disposition sent after default and ten (10) days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-613. Contents and form of notification before disposition of collateral: general.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Section 75-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To:	[Name of debtor, obligor or other person to which the notification is sent]
From:	[Name, address and telephone number of secured party]
Name of Debtor(s):	[Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell (or lease or license, as applicable) the [describe collateral] to the highest qualified bidder in public as follows:

Day and Date: ________________
Time: ________________
Place: ________________

[For a private disposition:]

We will sell (or lease or license, as applicable), the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of $________). You may request an accounting by calling us at [telephone number].

[END OF FORM]

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in Section 75-9-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 75-9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

Name and address of secured party:
Date:

NOTICE OF OUR PLAN TO SELL PROPERTY

Name and address of any obligor who is also a debtor:

Subject: [Identification of transaction]
We have your: [describe collateral] because you broke promises in our agreement.
[For a public disposition:]
We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: ______________
Time: ______________
Place: ______________

You may attend the sale and bring bidders if you want.

[For a private disposition]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe which is then due or past due, (excluding any amount that would not be due except for an acceleration provision), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number], or write us at [secured party's address] and request a written explanation. We will charge you $________ for the explanation if we sent you another written explanation of the amount you owe us within the last six (6) months.

If you need more information about the sale call us at [telephone number], or write us at [secured party's address].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

Names of all other debtors and obligors, if any:

[END OF FORM]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 75-9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 75-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

SOURCES: Derived from former 1972 Code § 75-9-504 [Codes, 1942, § 41A:9-504; Laws, 1966, ch. 316, § 9-504; Laws, 1970, ch. 272, § 1; Laws, 1977, ch. 452, § 34, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002

Cross References — Obligation of good faith, see § 75-1-203.

Seller's resale of goods following buyer's rejection, see § 75-2-706.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-504(1), (2).
6. In general; creditor's expenses and attorney's fees.
7. Secured debt.
8. —Damages for loss of use.
9. —Interest.
10. Subordinate interests.
11. Surplus.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-504(1), (2).

6. In general; creditor's expenses and attorney's fees.

Under Uniform Commercial Code Article 9, a security agreement may impose various charges that are not contained in the promissory note, with respect to which the security agreement was made, in the event of the debtor's default on the note. For example, under UCC § 9-504(1)(a) and § 9-506, the security agreement may provide for the debtor's payment, in the event of default, of the legal expenses and charges for repossession, storage, and redemption of the collateral. Furthermore, a valid acceleration clause in the security agreement can establish, in the event of default, a legal basis for collection from the debtor of both principal and accrued interest on the note. General Fin. Corp. v. Sprouse, 577 F.2d 989 (5th Cir. 1978).

A liquidated damage provision in a financing agreement providing that "reasonable attorneys' fees" of 15% of the unpaid balance due are payable upon the acceleration of the entire indebtedness due to the assignor's filing an assignment for the benefit of creditors, is subject to judicial review and modification under the court's inherent right to supervise the charging of fees for legal services as part of the State's strong public policy against the imposition of penalties in the private sector and its duty to protect "all creditors" from any possible mistake or possible overreaching. Courts will not enforce a liquidated damage provision which fixes damages in an amount "grossly disproportionate" to the harm actually or likely to be sustained by the nonbreaching party. The fixed percentage "attorneys' fee" is only a "maximum fee" which the creditor may charge only upon first proving the extent of the necessary legal services "actually rendered". Coastline Steel Prods., Inc. v. Goldhaber, 93 Misc. 2d 255 (1978).

Where security agreement provided that on debtor's default, creditor could retain counsel to protect its interest and collect balance due, and that debtor would pay reasonable counsel fees in amount of 15% of such unpaid balance, court had power to order special hearing (1) to ascertain amount of fees received by creditor's attorneys, and (2) to determine whether such amount was reasonable under UCC § 9-504(1)(a). Coastline Steel Prods., Inc. v. Goldhaber, 93 Misc. 2d 255 (1978).

UCC § 9-504(1)(a) relates to expenses, including attorney's fees, of liquidating the collateral and does not authorize award of reasonable attorney's fees for expenses incurred in bringing suit on a collateral promissory note. Kohlenberg v. American Plumbing Supply Co., 82 Wis. 2d 384, 263 N.W.2d 496 (1978).

Reference to attorneys' fees in UCC §§ 9-504(1)(a) is only to permit recovery where state law recognizes recovery and was not intended to change Nebraska law that attorneys' fees will be permitted only where state legislature has expressly provided by statute that award of such fees may be made by court; thus, the secured party was not entitled to retain attorneys' fees from proceeds of sale of collateral as provided in security agreement. Northwestern Nat'l Bank v. American Beef Packers, Inc., 548 F.2d 246 (8th Cir. Neb. 1977).

In action to recover on unpaid promissory notes secured by mortgage on realty, provision in both notes and mortgage that debtor agreed to pay reasonable attorney's fees arising from default was unenforceable on public policy grounds under well-established rule of Kentucky case law; and such rule was not changed by Kentucky version of UCC § 3-106(1)(e), under which sum payable is "sum certain," even though it is to be paid with costs of collection, or attorney's fee not exceeding 15 percent of amount owing, or $500, whichever is smaller, since such statute means only that attorney's fee greater than that allowed by the statute would render instrument indefinite, and therefore nonnegotiable, for failure to contain sum certain. Nor was such provision in notes and mortgage rendered enforceable by UCC § 9-504(1)(a), dealing with secured party's right to dispose of collateral and apply proceeds to, among other things, "reasonable attorney's fees" incurred by secured party, since UCC § 9-504(1)(a) applies only to personalty that is used as collateral, and in present case collateral consisted of realty. Mammoth Cave Prod. Credit Ass'n v. Geralds, 551 S.W.2d 5 (Ky. Ct. App. 1977).

Assignee of note and security agreement covering certain equipment did not have right to deduct from proceeds of sale of equipment following its repossession, expenses and attorney's fees incurred in connection with its repossession and sale under UCC § 9-504 since plaintiff, as assignee, acquired no greater rights against debtor than assignor had against him at time of assignment; assignor had no claim for expenses connected with repossession and sale, or attorney's fees for such purposes, since such expenses were all incurred by assignee, and, since assignor had not incurred any expenses of repossession, assignee acquired no rights for such expenses under the assignment. Centennial State Bank v. S.E.K. Constr. Co., 518 S.W.2d 143 (Mo. Ct. App. 1974).

Attorney's fees incurred in enforcing the security interest are properly allowed as authorized by the Code and where also authorized by the particular security agreement. Whitson v. Yaffe Iron & Metal Corp., 385 F.2d 168 (8th Cir. Ark. 1967).

7. Secured debt.

In creditor's action to collect on promissory note, to enforce agreement securing it, and to enforce agreement guaranteeing payment of note, contention of guarantors that creditor had improperly conducted foreclosure sale of collateral would be sustained where creditor's own evidence showed that it had violated UCC § 9-504(1) and (2) by applying proceeds of sale to pay off senior liens on collateral before satisfying indebtedness secured by security interest under which disposition of collateral was made. First Union Nat'l Bank v. Tectamar, Inc., 33 N.C. App. 604, 235 S.E.2d 894 (1977).

Where corporate debtor obtained numerous pieces of equipment from secured party in four distinct lots, each subject to distinct, but identical, security agreement, where two of these security agreements were guaranteed by individual guarantors, and where, upon default of all four agreements, secured party repossessed all four lots of equipment and sold them as single unit to single purchaser, secured party was not precluded by UCC from collecting deficiency merely because collateral was not sold in lots corresponding to separate lots in which collateral was first acquired by corporate debtor; even if creditor disposes of collateral in violation of UCC, debtor is not entitled to completely avoid its obligations to creditor, but is only entitled to recover "any loss" occasioned by secured party's failure to comply with appropriate provisions of UCC, and individual guarantors offered no evidence that any loss was suffered by corporate debtor because of form of disposition; furthermore, UCC does not require that repossessed collateral be disposed of in any particular manner and there was no evidence to show that sale of collateral in single lot was not disposition made in good faith and in commercially reasonable manner; however, secured party was not entitled to apply proceeds of sale, first to balances due on two security agreements which were not guaranteed, totally satisfying those obligations, and then to balances due on guaranteed security agreements leaving deficiency on them, but was required under UCC § 9-504(1)(b) to apply proceeds of disposition to satisfaction of indebtedness secured by security interest under which disposition was made. Wilson Leasing Co. v. Seaway Pharmacal Corp., 53 Mich. App. 359, 220 N.W.2d 83 (1974).

8. —Damages for loss of use.

Seller of tractor under purchase money security agreement was not entitled to recover damages from buyer for loss of use of tractor during period that tractor was wrongfully detained by buyer, where seller resold tractor for sum in excess of amount of underlying debt; UCC § 9-504(1) required that proceeds of sale be used to set aside debt, and recovery for loss of use of chattel during period of wrongful detention would effectively amount to double recovery. Housatonic Tractor Corp. v. Kamins, 50 A.D.2d 586 (2d Dep't 1975).

Where debtor sold vehicles that were subject to security interest to third party, secured party was entitled, on default, to enforce its right of possession against third party; failure of third party to surrender property immediately upon default and demand prevented secured party from using collateral under UCC § 9-207(4) or reselling or leasing it under UCC § 9-504(1), and third party was liable to secured party for loss of use of property as element of damages. Long Island Trust Co. v. Porta Aluminum, Inc., 49 A.D.2d 579 (2d Dep't 1975).

9. —Interest.

Under Uniform Commercial Code Article 9, a security agreement may impose various charges that are not contained in the promissory note, with respect to which the security agreement was made, in the event of the debtor's default on the note. For example, under UCC § 9-504(1)(a) and § 9-506, the security agreement may provide for the debtor's payment, in the event of default, of the legal expenses and charges for repossession, storage, and redemption of the collateral. Furthermore, a valid acceleration clause in the security agreement can establish, in the event of default, a legal basis for collection from the debtor of both principal and accrued interest on the note. General Fin. Corp. v. Sprouse, 577 F.2d 989 (5th Cir. 1978).

A lender whose security agreements provided for the debtor to pay a charge for what the lender contended was a "bonus" or capital payment but what was actually precomputed interest, may not collect that unearned interest from the proceeds of a public auction and sale which followed the debtor's default and acceleration of its indebtedness. Bostwick-Westbury Corp. v. Commercial Trading Co., 94 Misc. 2d 401 (1978).

Prior chattel mortgagee, after chattel mortgagor's default on loans and mortgagee's sale of collateral at public auction, was not entitled to deduct from sale proceeds amounts denominated "bonus" and "charges," so as to deprive subsequent chattel mortgagee of its rightful share, under UCC § 9-504(1)(c) and (2), of sale's proceeds because (1) such "bonus" and "charges" were actually "interest" on prior mortgagee's loan to debtor within meaning of UCC § 3-118(d), and (2) under New York law, lender was not entitled to collect unearned interest on money loaned in absence of subsequent agreement between lender and debtor. Bostwick-Westbury Corp. v. Commercial Trading Co., 94 Misc. 2d 401 (1978).

10. Subordinate interests.

Under UCC § 9-504(5), guarantor of debtor's note, as subrogee to rights of secured party, was successor to all of secured party's rights against debtor, including security interest in debtor's equipment. Manufacturers & Traders Trust Co. v. Goldman, 578 F.2d 904 (2d Cir. N.Y. 1978).

Creditor which had perfected security interest in most of debtor's assets on April 3, 1972, by filing proper financing statements, and which subsequently perfected such security interest in all of debtor's assets on January 28, 1975, by taking possession thereof, had under UCC § 9-301(1) and UCC § 9-312 right to assets superior to right of second creditor which did not acquire interest in assets until April 11, 1975, when it levied execution on judgment against debtor and became lien creditor under UCC § 9-301(3). Thus, on debtor's default, first creditor could sell such assets under UCC § 9-504(1) and retain all proceeds of sale when proceeds did not fully satisfy debt owed to such creditor. GE Co. v. Hol-Gar Mfg. Corp., 431 F. Supp. 881 (E.D. Pa. 1977), aff'd, 573 F.2d 1301 (3d Cir. Pa. 1978).

In action in nature of interpleader to determine whether secured creditor or feedmen claiming agister's liens were entitled to proceeds from sale of debtor's collateral, where (1) secured creditor, which had perfected its security interest in all of debtor's collateral, peacefully took possession of collateral after debtor's default and sold it at public auction under UCC § 9-504(1), (2) feedmen's agister liens did not come into existence until after perfection of creditor's security interest, and (3) trial court's judgment in favor of feedmen was based on alleged agreement between secured creditor and feedmen that feedmen, if their claims were paid from the sale's proceeds, would not disrupt sale by announcing to those present that they had lien on property being sold, court would award sale proceeds to secured creditor which clearly had prior right thereto. In such case, even assuming that alleged contract between secured creditor and feedmen had been made, contract was unenforceable because forbearance to exercise nonexistent "right" to interfere with commercially reasonable sale could not constitute valid consideration for such contract. Agristor Credit Corp. v. Unruh, 571 P.2d 1220 (Okla. 1977).

Purchasers of assets of tavern business at foreclosure sale were not liable to prior secured party who had unperfected security interest in tavern business assets, notwithstanding prior secured party was not given notice of sale; fact that foreclosure purchasers had knowledge of prior interest in collateral was not by itself evidence of bad faith, as foreclosing party's security interest was superior to prior secured party's security interest, foreclosure purchasers paid substantial price ($110,000) for assets, and there was no evidence that foreclosure purchasers knew that foreclosing parties failed to give notice required by UCC § 9-504. Young v. Golden State Bank, 39 Colo. App. 45, 560 P.2d 855 (1977).

In creditor's action to collect on promissory note, to enforce agreement securing it, and to enforce agreement guaranteeing payment of note, contention of guarantors that creditor had improperly conducted foreclosure sale of collateral would be sustained where creditor's own evidence showed that it had violated UCC § 9-504(1) and (2) by applying proceeds of sale to pay off senior liens on collateral before satisfying indebtedness secured by security interest under which disposition of collateral was made. First Union Nat'l Bank v. Tectamar, Inc., 33 N.C. App. 604, 235 S.E.2d 894 (1977).

Where corporate debtor obtained numerous pieces of equipment from secured party in four distinct lots, each subject to distinct, but identical, security agreement, where two of these security agreements were guaranteed by individual guarantors, and where, upon default of all four agreements, secured party repossessed all four lots of equipment and sold them as single unit to single purchaser, secured party was not precluded by UCC from collecting deficiency merely because collateral was not sold in lots corresponding to separate lots in which collateral was first acquired by corporate debtor; even if creditor disposes of collateral in violation of UCC, debtor is not entitled to completely avoid its obligations to creditor, but is only entitled to recover "any loss" occasioned by secured party's failure to comply with appropriate provisions of UCC, and individual guarantors offered no evidence that any loss was suffered by corporate debtor because of form of disposition; furthermore, UCC does not require that repossessed collateral be disposed of in any particular manner and there was no evidence to show that sale of collateral in single lot was not disposition made in good faith and in commercially reasonable manner; however, secured party was not entitled to apply proceeds of sale, first to balances due on two security agreements which were not guaranteed, totally satisfying those obligations, and then to balances due on guaranteed security agreements leaving deficiency on them, but was required under UCC § 9-504(1)(b) to apply proceeds of disposition to satisfaction of indebtedness secured by security interest under which disposition was made. Wilson Leasing Co. v. Seaway Pharmacal Corp., 53 Mich. App. 359, 220 N.W.2d 83 (1974).

11. Surplus.

Under UCC § 9-202, legal title to equipment of corporation, if not immaterial, was not decisive as to extent to which equipment could be carried as asset on corporation's balance sheet, even when transaction was cast in terms of lease-purchase option agreement, and in light of UCC § 9-504(2), such equipment represented net asset to extent that its value exceeded any indebtedness secured by it. Ellzey v. Fyr-Pruf, Inc., 376 So. 2d 1328 (Miss. 1979).

Under UCC § 9-504(5), guarantor of debtor's note, as subrogee to rights of secured party, was successor to all of secured party's rights against debtor, including security interest in debtor's equipment. Manufacturers & Traders Trust Co. v. Goldman, 578 F.2d 904 (2d Cir. N.Y. 1978).

Where stock that was security for loan was surrendered by escrow agent to secured party following debtor's default, at which time its market value was less than amount due on loan, and where secured party sought to recover deficiency, but retained stock and had it registered in secured party's name, actions of secured party did not constitute "otherwise disposing of collateral" within meaning of UCC § 9-504(1) and debtor was entitled to relief under UCC § 9-507 when stock subsequently appreciated in value to amount in excess of secured loan. In re Copeland, 531 F.2d 1195 (3d Cir. Del. 1976).

Under UCC § 9-501(3)(a), debtor's right to surplus under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), in the case of a transfer for security as opposed to a sale, cannot be waived by agreement of the parties. Major's Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Where (1) plaintiffs sought damages in class action against automobile credit company and automobile dealers for fraudulent and deceptive trade practices allegedly carried on by defendants as part of illegal combination and conspiracy in restraint of trade, in violation of Federal Trade Commission Act and Sherman Anti-Trust Act, and (2) plaintiffs' complaint had as its sole thrust the claim that plaintiffs had been misled into not claiming surplus due them under UCC § 9-504(2) following repossession and resale, after default, of cars purchased by plaintiffs, court held that although plaintiffs might be asserting a wrong and might have a common-law remedy by way of a tort or contract action, defendants' alleged conduct clearly was not intended to restrict competition and did not have effect of restricting it. Summey v. Ford Motor Credit Co., 449 F. Supp. 132 (D.C.S.C. 1976), aff'd, 573 F.2d 1306 (4th Cir. S.C. 1978).

Where there was no claim that collateral had not been sold in "commercially reasonable" manner as required by UCC § 9-504(3) and where collateral was sold for less than unpaid balance due on note, secured party was not required to account to debtor for surplus resulting from sale of collateral as provided by UCC § 9-504(2). Panagiotes v. Plummer, 5 Mass. App. Ct. 821, 362 N.E.2d 555 (1977).

Proceeds from disposition of pledged bonds in excess of amount owed to creditors, who had security interests under UCC §§ 9-203 and 9-204, belonged under UCC §§ 9-502 and 9-504 to debtors, and creditors were not entitled to retain entire collateral under UCC § 9-505 in absence of compliance with notice requirement under UCC § 9-505. Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976).

Under UCC § 9-504 secured creditor must account for any surplus realized from use or sale of collateral in excess of debt secured and under UCC § 9-112 surplus belongs to owner of collateral; thus, in action to obtain accounting from secured party for money or benefit it received from use and sale of equipment it repossessed and for judgment for any amount exceeding note secured by lien agreement on equipment, pleadings sufficiently alleged plaintiff's entitlement to any surplus which might exist where pleading, inter alia, alleged that equipment belonged to plaintiff. C & L Serv. Co. v. Northern Equip. Co., 525 P.2d 1260 (Okla. Ct. App. 1974).

Where secured party repossessed mobile home, which had been purchased by 2 debtors, sold repossession title to one debtor who in turn sold mobile home to third party and third party borrowed money from secured party to make purchase, and where net result of transaction was that secured party canceled balance due on original installment sales contract, $698.75, paid debtor $1,502.36, and became creditor of third party for sum of $2,201.11, transaction amounted to sale of repossessed mobile home to third party for $2,201.11 leaving surplus of $1,502.36 and other debtor, who was not given notice of sale, was entitled to one half of surplus. Morris v. Number 5 Credithrift of Am., Inc., 20 Ill. App. 3d 280, 314 N.E.2d 616 (5th Dist. 1974).

In action by plaintiff-debtor to recover surplus from foreclosure sale of used truck, where truck had been purchased by plaintiff for $23,500, plaintiff defaulted, and approximately six months after sale to plaintiff truck was resold for $21,494.40 in cash, plus trade-in allowance of $7,561.60 on vehicle which was later sold for $1,400, or total price of $29,056, surplus in favor of plaintiff should be computed by using actual market value of trade-in vehicle, $1,400, and not on basis of trade-in allowance. Webster v. GMAC, 267 Or. 304, 516 P.2d 1275 (1973) but see Carlson v. Blumenstein, 293 Or. 494, 651 P.2d 710 (1982).

Where secured party and cosigner of note failed after repossession of collateral to proceed in accordance with UCC provisions for disposition of collateral upon default, debtor was entitled to recover as damages value of security less debt. Farmers State Bank v. Otten, 87 S.D. 161, 204 N.W.2d 178 (1973).

RESEARCH REFERENCES

ALR. What constitutes a "public sale." 4 A.L.R.2d 575.

Necessity and sufficiency of notice of sale to mortgagor where chattel mortgage is sought to be foreclosed without judicial proceedings by sale under power. 30 A.L.R.2d 539.

Rights and duties of parties to conditional sales contract as to resale of repossessed property. 49 A.L.R.2d 15.

Uniform Commercial Code: Burden of proof as to commercially reasonable disposition of collateral. 59 A.L.R.3d 369.

Uniform Commercial Code: Failure of secured creditor to give required notice of disposition of collateral as bar to deficiency judgment. 59 A.L.R.3d 401.

What statute of limitation applies to action for surplus of proceeds from sale of collateral. 59 A.L.R.3d 1205.

Construction of term "debtor" as used in UCC § 9-504(3), requiring secured party to give notice to debtor of sale of collateral securing obligation. 5 A.L.R.4th 1291.

What is "commercially reasonable" disposition of collateral required by UCC § 9-504(3). 7 A.L.R.4th 308.

Loss or modification of right to notification of sale of repossessed collateral under Uniform Commercial Code § 9-504. 9

A.L.R.4th 552.

Failure of secured party to make "commercially reasonable" disposition of collateral under UCC § 9-504(3) as bar to deficiency judgment. 10 A.L.R.4th 413.

Sufficiency of secured party's notification of sale or other intended disposition of collateral under UCC § 9-504(3). 11 A.L.R.4th 241.

Nature of collateral which secured party may sell or otherwise dispose of without giving notice to defaulting debtor under UCC § 9-504(3). 11 A.L.R.4th 1060.

Secured transactions: what is "public" or "private" sale under UCC § 9-504(3). 60 A.L.R.4th 1012.

UCC: value of trade-in taken on sale of collateral for purposes of computing surplus or deficiency. 72 A.L.R.4th 1128.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 534-543.

Rights and remedies of debtor; recovery from secured party for noncompliance; notice of sale not given, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:815, 9:817, 9:819.

Intervention in action by secured party to recover collateral, by owner of collateral not the debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:81.

Default; Rights and remedies of secured party; to recover deficiency following foreclosure sale, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:683.

Default; rights and remedies of secured party; sale or other disposition of collateral, 6 Am. Jur. Pl Pr Forms (Rev), Secured Transactions, Forms 9:751-9:763.

Default; Rights and remedies of debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:792.

Right of secured party to dispose of collateral after default, 19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3771 et seq.

4 Am. Jur. Proof of Facts 2d, Secured Party's Failure to Sell Collateral in Commercially Reasonable Manner, § 12 et seq. (proof that secured party's sale of repossessed collateral was not commercially reasonable).

29 Am. Jur. Proof of Facts 2d 711, Secured Transactions — Waiver of Security Interest.

35 Am. Jur. Proof of Facts 2d 517, Sufficiency of Notice of Secured Party's Proposed Disposition of Collateral.

CJS. 79 C.J.S., Secured Transactions § 153 et seq.

72 C.J.S., Pledges §§ 58, 59 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-616. Explanation of calculation of surplus or deficiency.

(a) In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under Section 75-9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 75-9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen (14) days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen (14) days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five (35) days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five (35) days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one (1) response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding Twenty-five Dollars ($25.00) for each additional response.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-617. Rights of transferee of collateral.

(a) A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

SOURCES: Derived from former 1972 Code § 75-9-504 [Codes, 1942, § 41A:9-504; Laws, 1966, ch. 316, § 9-504; Laws, 1970, ch. 272, § 1; Laws, 1977, ch. 452, § 34, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Priority of a lien to secure payment of oil or gas royalty proceeds, see § 53-3-41.

Obligation of good faith, see § 75-1-203.

Seller's resale of goods following buyer's rejection, see § 75-2-706.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-504(4).
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-504(4).

6. In general.

In action by retail furniture dealer which had entered into agreement with defendant financer, under which plaintiff transferred its accounts receivable to defendant in exchange for, being provided with funds in specified proportion to accounts defendant accepted from plaintiff, to recover sums held in reserve account established by parties' agreement, (1) plaintiff's accounts receivable were not sold to defendant, but were transferred to it as collateral security within meaning of UCC § 9-502(2) in exchange for line of credit defendant extended to plaintiff; (2) as a result, under UCC § 9-502(2) and § 9-504(2) (which are identical provisions), defendant was required to account for, and to turn over to plaintiff, any surplus collected by defendant on the transferred accounts, and plaintiff in turn was liable for any deficiency on such accounts; and (3) surplus held by defendant on loan owed by plaintiff and deficiency on such loan were cross-obligations that must be set off against each other. Major's

Furn. Mart, Inc. v. Castle Credit Corp., 449 F. Supp. 538 (E.D. Pa. 1978), aff'd, 602 F.2d 538 (3d Cir. Pa. 1979).

Where (1) plaintiff and his wife purchased used mobile home, (2) plaintiff's father-in-law cosigned security agreement and note as accommodation maker, (3) plaintiff defaulted on payments, (4) plaintiff's father-in-law, with secured party's consent, obtained possession of home, paid off balance due on note, and made repairs on home, (5) secured party obtained repossession title in its name, released security agreement, and transferred repossession title to plaintiff's father-in-law without notifying plaintiff, who was in jail, of either the account delinquency or the subsequent transfer of title, and (6) after plaintiff's release from jail, plaintiff's father-in-law sold home with plaintiff's consent, but did not give accounting of sale or proceeds therefrom to plaintiff, court held (1) that plaintiff did not waive right to notice of disposition of home under UCC § 9-504(3), since UCC § 9-501(3)(b) specifically states that such right cannot be waived; (2) plaintiff's father-in-law, as accommodation maker of note, did not fall within scope of UCC § 9-504(5), dealing with transfers of collateral that are not sales and thus do not require notice to debtor; (3) UCC § 9-504(5) did not contemplate complete extinguishment of plaintiff's right to home, as was done in present case by secured party's transfer of repossession title to plaintiff's father-in-law; and (4) under UCC § 9-507(1) and UCC § 1-103, plaintiff was entitled to damages for conversion of home on basis of benefit to defendant wrongdoers, rather than on basis of allowing full value of home as enhanced by wrongdoers. Western Nat'l Bank v. Harrison, 577 P.2d 635 (Wyo. 1978).

In action by plaintiff against two former business associates seeking damages for alleged conspiracy to appropriate stock which plaintiff had pledged to bank as security for loan, where, after plaintiff defaulted, bank sold stock to defendants pursuant to repurchase agreement executed in connection with loan transaction: (1) after default, plaintiff still had legal title to stock, subject to bank's lien which could have been extinguished by public sale as provided in UCC; (2) to recover stock from bank, plaintiff was required to make valid tender of amount of debt, plus accrued interest, as condition precedent to right to maintain suit; (3) under UCC § 9-504(5), when bank conveyed stock to defendants in accord with their repurchase agreement, defendants became subrogated to rights and duties of bank and, hence, plaintiff's action against defendants was barred by his failure to make such tender or to show any excuse or justification therefor. Barnett v. Maida, 503 S.W.2d 610 (Tex. Civ. App. 1973), writ ref'd n.r.e., (May 22, 1974).

Auto dealer sold car to defendant-buyer for net sum of $1700; dealer assigned sales contract to plaintiff-assignee; plaintiff-assignee repossessed auto and sold it back to dealer for $348; dealer resold auto for $1050; held, $348 transaction was mere transfer, not sale or disposition, of collateral; therefore, notice of this transaction to defendant-buyer could not comply with requirement of "reasonable notification of time and place" of sale of repossessed collateral, and plaintiff-assignee could not recover balance due on contract, where defendant-buyer had not been notified of resale of auto for $1050. Jefferson Credit Corp. v. Marcano, 60 Misc. 2d 138 (1969).

RESEARCH REFERENCES

ALR. What constitutes a "public sale." 4 A.L.R.2d 575.

Necessity and sufficiency of notice of sale to mortgagor where chattel mortgage is sought to be foreclosed without judicial proceedings by sale under power. 30 A.L.R.2d 539.

Rights and duties of parties to conditional sales contract as to resale of repossessed property. 49 A.L.R.2d 15.

Uniform Commercial Code: Burden of proof as to commercially reasonable disposition of collateral. 59 A.L.R.3d 369.

Uniform Commercial Code: Failure of secured creditor to give required notice of disposition of collateral as bar to deficiency judgment. 59 A.L.R.3d 401.

What statute of limitation applies to action for surplus of proceeds from sale of collateral. 59 A.L.R.3d 1205.

Construction of term "debtor" as used in UCC § 9-504(3), requiring secured party to give notice to debtor of sale of collateral securing obligation. 5 A.L.R.4th 1291.

What is "commercially reasonable" disposition of collateral required by UCC § 9-504(3). 7 A.L.R.4th 308.

Loss or modification of right to notification of sale of repossessed collateral under Uniform Commercial Code § 9-504. 9 A.L.R.4th 552.

Failure of secured party to make "commercially reasonable" disposition of collateral under UCC § 9-504(3) as bar to deficiency judgment. 10 A.L.R.4th 413.

Sufficiency of secured party's notification of sale or other intended disposition of collateral under UCC § 9-504(3). 11 A.L.R.4th 241.

Nature of collateral which secured party may sell or otherwise dispose of without giving notice to defaulting debtor under UCC § 9-504(3). 11 A.L.R.4th 1060.

Secured transactions: what is "public" or "private" sale under UCC § 9-504(3). 60 A.L.R.4th 1012.

UCC: value of trade-in taken on sale of collateral for purposes of computing surplus or deficiency. 72 A.L.R.4th 1128.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 534-543.

Rights and remedies of debtor; recovery from secured party for noncompliance; notice of sale not given, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:815, 9:817, 9:819.

Intervention in action by secured party to recover collateral, by owner of collateral not the debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:81.

Default; Rights and remedies of secured party; to recover deficiency following foreclosure sale, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:683.

Default; rights and remedies of secured party; sale or other disposition of collateral, 6 Am. Jur. Pl Pr Forms (Rev), Secured Transactions, Forms 9:751-9:763.

Default; Rights and remedies of debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:792.

Right of secured party to dispose of collateral after default, 19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, § 253:3771 et seq.

4 Am. Jur. Proof of Facts 2d, Secured Party's Failure to Sell Collateral in Commercially Reasonable Manner, § 12 et seq. (proof that secured party's sale of repossessed collateral was not commercially reasonable).

29 Am. Jur. Proof of Facts 2d 711, Secured Transactions — Waiver of Security Interest.

35 Am. Jur. Proof of Facts 2d 517, Sufficiency of Notice of Secured Party's Proposed Disposition of Collateral.

CJS. 79 C.J.S., Secured Transactions § 153 et seq.

72 C.J.S., Pledges §§ 58, 59 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December 1979.

§ 75-9-618. Rights and duties of certain secondary obligors.

(a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in subsection (a):

(1) Is not a disposition of collateral under Section 75-9-610; and

(2) Relieves the secured party of further duties under this article.

SOURCES: Derived from former 1972 Code § 75-9-504 [Codes, 1942, § 41A:9-504; Laws, 1966, ch. 316, § 9-504; Laws, 1970, ch. 272, § 1; Laws, 1977, ch. 452, § 34, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

§ 75-9-619. Transfer of record or legal title.

(a) In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c);

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under Section 75-9-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 75-9-624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) are met.

(c) For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within twenty (20) days after the proposal is sent.

(d) To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to Section 75-9-621, within twenty (20) days after notification was sent to that person; and

(2) In other cases:

(A) Within twenty (20) days after the last notification was sent pursuant to Section 75-9-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 75-9-610 within the time specified in subsection (f) if:

(1) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) To comply with subsection (e), the secured party shall dispose of the collateral:

(1) Within ninety (90) days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

SOURCES: Derived from former 1972 Code § 75-9-505 [Codes, 1942, § 41A:9-505; Laws, 1966, ch. 316, § 9-505; Laws, 1977, ch. 452, § 35, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-505.

6. In general.
7. Scope.
8. Retention of collateral in satisfaction of obligation.
9. Notice of intent to retain collateral.
10. Objection by debtor.
11. Debtor's claim against secured party.
12. Claim of secured party against debtor after sale of collateral.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-505.

6. In general.

Where note was accompanied by security agreement which granted security interest in all property of debtor in secured party's possession as security for all obligations owed by debtor, secured party, on default on note, clearly had right under UCC § 9-503 to take possession of all property of debtor in secured party's possession, and exercise of this right did not result in conversion of such collateral by secured party, since situation did not involve applicability of UCC § 9-505(1), which provides that if debtor has paid 60 percent of loan, secured party who has taken possession of collateral consisting of consumer goods must dispose of such collateral within 90 days or face liability for conversion. Keller v. La Rissa, Inc., 60 Haw. 1, 586 P.2d 1017 (1978).

UCC § 9-505 is applicable only to a security interest in consumer goods. In re Tops Cleaners, Inc., 20 Pa. D. & C.2d 264 (1960).

7. Scope.

A secured party who is in possession of collateral that is not subject to the obligations imposed by UCC § 9-505(1) may seek judgment on the debt and forego recourse against the collateral, since under UCC § 9-501(1), the secured party's rights and remedies are cumulative. Except in the special case covered by UCC § 9-505(1), the Uniform Commercial Code does not require a secured party in possession of collateral to apply it to the reduction of the debt. Keller v. La Rissa, Inc., 60 Haw. 1, 586 P.2d 1017 (1978).

In lessor's suit for damages for lessee's default under personal property leasing agreement, where it was not established as matter of law that lease instrument created security interest in leased property or was anything other than a straight lease, rather than a memorandum showing a secured transaction, UCC § 9-504 and § 9-505, dealing with secured party's disposition of collateral, were inapplicable. Robinson v. Granite Equip. Leasing Corp., 553 S.W.2d 633 (Tex. Civ. App. 1977), ref. n.r.e (Oct. 5, 1977).

Indorsers of a note give by a conditional buyer to a conditional seller are not discharged under subsection (2) of this section either by the seller's acceptance of a dividend under an assignment for benefit of creditors by the buyer, or by the seller's repossessing and selling on behalf of the assignee of the note the property conditionally sold, where the seller made no proposal to keep the collateral in satisfaction of his obligation, subsection (2) being applicable only where such a proposal is made. Priggen Steel Bldgs. Co. v. Parsons, 350 Mass. 62, 213 N.E.2d 252 (1966).

A cash register company did not lose its right to enforce its claim for the final two monthly instalments due from its creditor under a twenty-two monthly payment bailment lease by failure to sell the cash register within 90 days, since the cash register was not consumer goods. In re Tops Cleaners, Inc., 20 Pa. D. & C.2d 264 (1960).

8. Retention of collateral in satisfaction of obligation.

Where (1) bank had perfected security interest in original debtor corporation's inventory, fixtures, and equipment, including after-acquired property, which was superior to lien later obtained by junior lienor under promissory note secured by same collateral, (2) original debtor corporation defaulted on notes given to bank (senior lienor) and to junior lienor, (3) junior lienor without informing bank took over assets of original debtor corporation, transferred them to newly former corporation, began selling the original inventory which had become commingled with new inventory, and, with respect to original debtor corporation's assets, filed foreclosure complaint against bank and former owners of original debtor corporation alleging that he had taken possession of original debtor corporation's property, subject to bank's security interest, and was seeking to discharge obligation owed to bank in order to become owner of such property, and (4) bank filed complaint in replevin and took possession of collateral, trial court's judgment in favor of bank which held that bank's security interest was at all times paramount to junior lienor's lien, that after-acquired property clause in bank's security agreement with original debtor corporation covered items that junior lienor had added in his operation of business under new corporation, and that bank should sell collateral, satisfy its own security interest from sale proceeds, and give remaining proceeds to junior lienor was affirmed because (1) bank's after-acquired property clause effectively covered inventory and proceeds of both original debtor corporation and new corporation, (2) bank's security interest continued in collateral, including after-acquired property, under UCC § 9-306(2) and § 9-311, which must be read together, and (3) since junior lienor, on default of original debtor corporation, did not proceed in accordance with UCC § 9-505(2) in attempting to retain collateral, disposition of collateral ordered by trial court was proper. American Heritage Bank & Trust Co. v. O. & E., Inc., 40 Colo. App. 306, 576 P.2d 566 (1978).

Under UCC Article 9, secured party has two relevant options after repossessing goods of defaulting debtor. Under UCC § 9-505(2), secured party can retain collateral in satisfaction of debtor's obligation. Alternatively, under UCC § 9-504(1), secured party can sell repossessed goods, apply sale price to indebtedness, and look to debtor for any deficiency. However, UCC § 9-504(3) requires that any sale under that section must be commercially reasonable. National Equip. Rental, Ltd. v. Priority Elecs. Corp., 435 F. Supp. 236 (E.D.N.Y. 1977).

Where evidence in conversion action showed that plaintiff purchased motorcycle under instalment contract giving seller security interest in vehicle; that seller assigned contract for value and with full recourse to bank, which filed contract of record on July 31, 1972; that purchaser defaulted in making payments in October, 1973; that seller paid balance due on vehicle to bank and bank orally reassigned contract to seller on April 4, 1974; that seller then paid third party's bill for repairs to vehicle and repossessed vehicle from such party; and that purchaser instituted action against seller after failing to repay seller for amounts paid out on vehicle, (1) seller on buying contract back from bank became secured party entitled to self-help repossession under UCC § 9-503; (2) seller did not convert vehicle by paying repair bill and repossessing vehicle, since such action was authorized by debtor-redemption provisions of UCC § 9-506; and (3) conversion claim based on seller's alleged violation of UCC § 9-505 also failed because it was not made until final argument at trial. Eustice v. Brazille, 567 P.2d 92 (Okla. 1977).

Where there were questions of fact as to (1) whether secured party, by holding collateral for a period of time in excess of five years, had exceeded reasonable length of time secured party may hold collateral before it is deemed to have exercised its right to retain that collateral in satisfaction of obligation and (2) whether secured party knew that stock belonged to party other than its debtor, motion by secured party for summary judgment would be denied inasmuch as favorable disposition of these two issues would entitle loan guarantor who had pledged stock as collateral for loan to recover damages under UCC § 9-507 against secured party for its violation of notice guarantees contained in UCC §§ 9-112(b) and 9-505(2). Shultz v. Delaware Trust Co., 360 A.2d 576 (Del. Super. 1976).

Repossession and disposition procedures used by secured party did not comply with those provided in Article 9 of UCC where, after repossessing automobiles, notice of sale was sent by registered mail to each defaulting purchaser advising him that his car would be sold at public auction to highest bidder on specified date for not less than specified minimum amount, where only public notice of sale was blackboard placed in office of secured party listing date of sale, initials of defaulting purchaser, and year and make of automobile, where secured party did not conduct sale at public auction, as stated in notice of sale, but on date of sale credited debtor's account with minimum price stated in notice of sale and then proceeded to collect deficiency by taking judgment on cognovit notes signed by debtors, and where secured party then obtained repossession titles for automobiles involved and resold them from its used car lot, at retail, to other consumers at substantially higher prices than amounts credited. Although UCC § 9-505(2) authorizes secured party in possession of repossessed goods to retain those goods in satisfaction of debtor's obligations, provided written notice of such intention is sent to debtor and debtor does not object within 30 days, and although debtors in present case made no objection to proceedings, secured party did not comply with provisions of UCC § 9-504 and, thus, was not entitled to deficiency judgment as permitted under UCC § 9-504(2). Miles v. N.J. Motors, Inc., 44 Ohio App. 2d 351, 338 N.E.2d 784 (1975).

Debt was discharged when secured party, after debtor's default in payments, repossessed truck, used it for purposes other than its preservation, and did not initiate suit on debt for period of approximately 4 months. Moran v. Holman, 514 P.2d 817 (Alaska 1973).

9. Notice of intent to retain collateral.

In order for a secured party to retain the collateral in satisfaction of the indebtedness, the requirements of UCC § 9-505(2) must be followed. Under this section, a secured party who proposes to retain the collateral must first notify the debtor and other secured parties of the plan. And if a person entitled to notice objects, the sale provisions of UCC § 9-504 then become applicable. Jackson v. Star Sprinkler Corp., 575 F.2d 1223 (8th Cir. Mo. 1978).

Secured party who proposed after debtor's default to retain collateral in satisfaction of the obligation, but who failed to give debtor written notice of such proposal as required by UCC § 9-505(2), could not retain collateral since waiver of such notice is expressly prohibited by UCC § 9-501(3)(c). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Although strict compliance with the written notice provisions of UCC § 9-505(2) may not be essential where the debtor is claiming that the secured party has retained the collateral to satisfy the obligation, the creditor should in some way manifest an intent to accept the collateral in full satisfaction of such obligation. The better interpretation of UCC

§ 9-505(2) is that it is a provision drafted for the benefit of the secured party by allowing him the option to retain the collateral in satisfaction of the debt in certain specified situations where he manifests that intent. A debtor who has been damaged by improper retention of collateral has a remedy in UCC § 9-507(1), which allows him to recover from the secured party any loss caused by a failure to comply with any of the default provisions of Part 5 of UCC Article 9. If the loss experienced by the debtor equals the amount due under the obligation, the secured party, of course, will be entitled to no recovery. The debtor is sufficiently protected by UCC § 9-507(1) without employing a strained reading of UCC § 9-505(2) to imply retention of collateral in satisfaction of the debt where no such result was intended by the secured party. Nelson v. Armstrong, 99 Idaho 422, 582 P.2d 1100 (1978).

Proceeds from disposition of pledged bonds in excess of amount owed to creditors, who had security interests under UCC §§ 9-203 and 9-204, belonged under UCC §§ 9-502 and 9-504 to debtors, and creditors were not entitled to retain entire collateral under UCC § 9-505 in absence of compliance with notice requirement under UCC § 9-505. Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976).

Where defaulting debtors were not given notice by secured creditor of intent to retain collateral in satisfaction of debt but were given notice of intent to enforce security interest by means of sale of pledged collateral, and defaulting debtors then resisted secured party's exercise of that right, causing secured party to seek writ of mandate which ultimately effectuated sale, secured party's actions in achieving sale did not constitute rescission and satisfaction of debt under UCC 9-505(2) so as to bar further recovery thereon. Stensvad v. Miners & Merchants Bank, 163 Mont. 409, 517 P.2d 715 (1973).

Secured party cannot retain collateral unless he gives notice to debtor; where notice required by UCC § 9-505 was not given receiver of collateral has option of allowing secured party to retain collateral in full satisfaction of underlying obligation or of ordering sale pursuant to UCC § 9-504. Brownstein v. Fiberonics Indus., Inc., 110 N.J. Super. 43, 264 A.2d 262 (1970).

The creditor's failure to give notice of intention to retain the collateral in discharge of the debt does not prevent the debtor from showing that the collateral was in fact retained by the creditor and on the basis of such fact he may claim that he is discharged from further liability. The giving of notice protects the creditor from a subsequent claim that he should have sold the collateral. Northern Fin. Corp. v. Chatwood Coffee Shop, Inc., 4 U.C.C. Rep. Serv. 674 (1967, NY Sup).

Secured party in possession of collateral who fails to give written notice as to his proposed retention of collateral to debtor or to other secured party, has no legal right to retain collateral. In re Sports Autos, Inc., 117 Pitts. Legal J. 199 (Pa. 1969).

10. Objection by debtor.

In action against secured creditor, by guarantor of debts secured by pledged stock certificates, defaulting debtors, including guarantor, could not rely on UCC § 9-505(2) to contend that creditor's sale of pledged collateral constituted rescission and satisfaction of debt where debtors were given notice of intent to enforce security interest by means of sale of pledged collateral and debtors then resisted creditor's exercise of that right, causing creditor to seek writ of mandate to effect sale. Stensvad v. Miners & Merchants Bank, 163 Mont. 409, 517 P.2d 715 (1973).

11. Debtor's claim against secured party.

Where on September 22, 1976, bank repossessed automobile given as collateral for loan to debtor and where, as of June 17, 1977, bank had not disposed of collateral and debtor had repaid more than 60 per cent of loan, debtor as provided by UCC § 9-505(1) was entitled to recover from bank either for conversion or under UCC § 9-507(1), governing creditor's liability for failure to comply with provisions of UCC Article 9. Marshall v. Fulton Nat'l Bank, 145 Ga. App. 190, 243 S.E.2d 266 (1978).

Where note was accompanied by security agreement which granted security interest in all property of debtor in secured party's possession as security for all obligations owed by debtor, secured party, on default on note, clearly had right under UCC § 9-503 to take possession of all property of debtor in secured party's possession, and exercise of this right did not result in conversion of such collateral by secured party, since situation did not involve applicability of UCC § 9-505(1), which provides that if debtor has paid 60 percent of loan, secured party who has taken possession of collateral consisting of consumer goods must dispose of such collateral within 90 days or face liability for conversion. Keller v. La Rissa, Inc., 60 Haw. 1, 586 P.2d 1017 (1978).

Where secured party and cosigner of note failed after repossession of collateral to proceed in accordance with UCC provisions for disposition of collateral upon default, debtor was entitled to recover as damages value of security less debt. Farmers State Bank v. Otten, 87 S.D. 161, 204 N.W.2d 178 (1973).

12. Claim of secured party against debtor after sale of collateral.

A security holder who has repossessed a truck under a defaulted conditional sales contract is required to liquidate it at reasonable public sale as a condition of seeking further recovery from the conditional purchaser; and the conditional purchaser's obligation is limited to whatever deficiency remains after such a sale. Cox Motor Car Co. v. Castle, 402 S.W.2d 429 (Ky. 1966).

In the absence of evidence that following the repossession of a truck under a defaulted sales contract the collateral was sold and that a deficiency resulted, the security holder has no claim against the conditional purchaser. Cox Motor Car Co. v. Castle, 402 S.W.2d 429 (Ky. 1966).

Where an assignee of a conditional sales contract which repossessed an automobile on conditional buyer's default in making of payments sold the automobile four days after repossession in violation of Mass GL c. 255, § 11, there was a breach of contract by such assignee, precluding the maintenance of an action for deficiency predicated upon the resale. Associates Disct. Corp. v. Girard, 19 Mass. App. Dec. 95 (1960).

RESEARCH REFERENCES

ALR. Rights and duties of parties to conditional sales contract as to resale of repossessed property. 49 A.L.R.2d 15.

Construction and operation of UCC § 9-505(2) authorizing secured party in possession of collateral to retain it in satisfaction of obligation. 55 A.L.R.3d 651.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 628-644.

Default; acceptance of collateral in satisfaction of obligation, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:771-9:775.

Default; rights and remedies of debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:791, 9:792.

Compulsory discharge of collateral; acceptance of collateral as discharge of obligation, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2180 through 253:2188.

CJS. 72 C.J.S., Pledges § 51 et seq.

Law Reviews. 1987 Mississippi Supreme Court Review, Corporate, contract and commercial law. 57 Miss. L. J. 467, August, 1987.

§ 75-9-621. Notification of proposal to accept collateral.

(a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, ten (10) days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten (10) days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 75-9-311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

SOURCES: Derived from former 1972 Code § 75-9-505 [Codes, 1942, § 41A:9-505; Laws, 1966, ch. 316, § 9-505; Laws, 1977, ch. 452, § 35, eff from and after April 1, 1978] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-505(4).
6. Retention of collateral in satisfaction of obligation.
7. Notice of intent to retain collateral.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-505(4).

6. Retention of collateral in satisfaction of obligation.

Where (1) bank had perfected security interest in original debtor corporation's inventory, fixtures, and equipment, including after-acquired property, which was superior to lien later obtained by junior lienor under promissory note secured by same collateral, (2) original debtor corporation defaulted on notes given to bank (senior lienor) and to junior lienor, (3) junior lienor without informing bank took over assets of original debtor corporation, transferred them to newly former corporation, began selling the original inventory which had become commingled with new inventory, and, with respect to original debtor corporation's assets, filed foreclosure complaint against bank and former owners of original debtor corporation alleging that he had taken possession of original debtor corporation's property, subject to bank's security interest, and was seeking to discharge obligation owed to bank in order to become owner of such property, and (4) bank filed complaint in replevin and took possession of collateral, trial court's judgment in favor of bank which held that bank's security interest was at all times paramount to junior lienor's lien, that after-acquired property clause in bank's security agreement with original debtor corporation covered items that junior lienor had added in his operation of business under new corporation, and that bank should sell collateral, satisfy its own security interest from sale proceeds, and give remaining proceeds to junior lienor was affirmed because (1) bank's after-acquired property clause effectively covered inventory and proceeds of both original debtor corporation and new corporation, (2) bank's security interest continued in collateral, including after-acquired property, under UCC § 9-306(2) and § 9-311, which must be read together, and (3) since junior lienor, on default of original debtor corporation, did not proceed in accordance with UCC § 9-505(2) in attempting to retain collateral, disposition of collateral ordered by trial court was proper. American Heritage Bank & Trust Co. v. O. & E., Inc., 40 Colo. App. 306, 576 P.2d 566 (1978).

Under UCC Article 9, secured party has two relevant options after repossessing goods of defaulting debtor. Under UCC § 9-505(2), secured party can retain collateral in satisfaction of debtor's obligation. Alternatively, under UCC § 9-504(1), secured party can sell repossessed goods, apply sale price to indebtedness, and look to debtor for any deficiency. However, UCC § 9-504(3) requires that any sale under that section must be commercially reasonable. National Equip. Rental, Ltd. v. Priority Elecs. Corp., 435 F. Supp. 236 (E.D.N.Y. 1977).

Where evidence in conversion action showed that plaintiff purchased motorcycle under instalment contract giving seller security interest in vehicle; that seller assigned contract for value and with full recourse to bank, which filed contract of record on July 31, 1972; that purchaser defaulted in making payments in October, 1973; that seller paid balance due on vehicle to bank and bank orally reassigned contract to seller on April 4, 1974; that seller then paid third party's bill for repairs to vehicle and repossessed vehicle from such party; and that purchaser instituted action against seller after failing to repay seller for amounts paid out on vehicle, (1) seller on buying contract back from bank became secured party entitled to self-help repossession under UCC § 9-503; (2) seller did not convert vehicle by paying repair bill and repossessing vehicle, since such action was authorized by debtor-redemption provisions of UCC § 9-506; and (3) conversion claim based on seller's alleged violation of UCC § 9-505 also failed because it was not made until final argument at trial. Eustice v. Brazille, 567 P.2d 92 (Okla. 1977).

Where there were questions of fact as to (1) whether secured party, by holding collateral for a period of time in excess of five years, had exceeded reasonable length of time secured party may hold collateral before it is deemed to have exercised its right to retain that collateral in satisfaction of obligation and (2) whether secured party knew that stock belonged to party other than its debtor, motion by secured party for summary judgment would be denied inasmuch as favorable disposition of these two issues would entitle loan guarantor who had pledged stock as collateral for loan to recover damages under UCC § 9-507 against secured party for its violation of notice guarantees contained in UCC §§ 9-112(b) and 9-505(2). Shultz v. Delaware Trust Co., 360 A.2d 576 (Del. Super. 1976).

Repossession and disposition procedures used by secured party did not comply with those provided in Article 9 of UCC where, after repossessing automobiles, notice of sale was sent by registered mail to each defaulting purchaser advising him that his car would be sold at public auction to highest bidder on specified date for not less than specified minimum amount, where only public notice of sale was blackboard placed in office of secured party listing date of sale, initials of defaulting purchaser, and year and make of automobile, where secured party did not conduct sale at public auction, as stated in notice of sale, but on date of sale credited debtor's account with minimum price stated in notice of sale and then proceeded to collect deficiency by taking judgment on cognovit notes signed by debtors, and where secured party then obtained repossession titles for automobiles involved and resold them from its used car lot, at retail, to other consumers at substantially higher prices than amounts credited. Although UCC § 9-505(2) authorizes secured party in possession of repossessed goods to retain those goods in satisfaction of debtor's obligations, provided written notice of such intention is sent to debtor and debtor does not object within 30 days, and although debtors in present case made no objection to proceedings, secured party did not comply with provisions of UCC § 9-504 and, thus, was not entitled to deficiency judgment as permitted under UCC § 9-504(2). Miles v. N.J. Motors, Inc., 44 Ohio App. 2d 351, 338 N.E.2d 784 (1975).

Debt was discharged when secured party, after debtor's default in payments, repossessed truck, used it for purposes other than its preservation, and did not initiate suit on debt for period of approximately 4 months. Moran v. Holman, 514 P.2d 817 (Alaska 1973).

7. Notice of intent to retain collateral. In order for a secured party to retain the collateral in satisfaction of the indebtedness, the requirements of UCC § 9-505(2) must be followed. Under this section, a secured party who proposes to retain the collateral must first notify the debtor and other secured parties of the plan. And if a person entitled to notice objects, the sale provisions of UCC § 9-504 then become applicable. Jackson v. Star Sprinkler Corp., 575 F.2d 1223 (8th Cir. Mo. 1978).

Secured party who proposed after debtor's default to retain collateral in satisfaction of the obligation, but who failed to give debtor written notice of such proposal as required by UCC § 9-505(2), could not retain collateral since waiver of such notice is expressly prohibited by UCC § 9-501(3)(c). Stensel v. Stensel, 63 Ill. App. 3d 639, 380 N.E.2d 526, 11 A.L.R.4th 1054 (4th Dist. 1978).

Although strict compliance with the written notice provisions of UCC § 9-505(2) may not be essential where the debtor is claiming that the secured party has retained the collateral to satisfy the obligation, the creditor should in some way manifest an intent to accept the collateral in full satisfaction of such obligation. The better interpretation of UCC § 9-505(2) is that it is a provision drafted for the benefit of the secured party by allowing him the option to retain the collateral in satisfaction of the debt in certain specified situations where he manifests that intent. A debtor who has been damaged by improper retention of collateral has a remedy in UCC § 9-507(1), which allows him to recover from the secured party any loss caused by a failure to comply with any of the default provisions of Part 5 of UCC Article 9. If the loss experienced by the debtor equals the amount due under the obligation, the secured party, of course, will be entitled to no recovery. The debtor is sufficiently protected by UCC § 9-507(1) without employing a strained reading of UCC § 9-505(2) to imply retention of collateral in satisfaction of the debt where no such result was intended by the secured party. Nelson v. Armstrong, 99 Idaho 422, 582 P.2d 1100 (1978).

Proceeds from disposition of pledged bonds in excess of amount owed to creditors, who had security interests under UCC §§ 9-203 and 9-204, belonged under UCC §§ 9-502 and 9-504 to debtors, and creditors were not entitled to retain entire collateral under UCC § 9-505 in absence of compliance with notice requirement under UCC § 9-505. Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976).

Where defaulting debtors were not given notice by secured creditor of intent to retain collateral in satisfaction of debt but were given notice of intent to enforce security interest by means of sale of pledged collateral, and defaulting debtors then resisted secured party's exercise of that right, causing secured party to seek writ of mandate which ultimately effectuated sale, secured party's actions in achieving sale did not constitute rescission and satisfaction of debt under UCC 9-505(2) so as to bar further recovery thereon. Stensvad v. Miners & Merchants Bank, 163 Mont. 409, 517 P.2d 715 (1973).

Secured party cannot retain collateral unless he gives notice to debtor; where notice required by UCC § 9-505 was not given receiver of collateral has option of allowing secured party to retain collateral in full satisfaction of underlying obligation or of ordering sale pursuant to UCC § 9-504. Brownstein v. Fiberonics Indus., Inc., 110 N.J. Super. 43, 264 A.2d 262 (1970).

The creditor's failure to give notice of intention to retain the collateral in discharge of the debt does not prevent the debtor from showing that the collateral was in fact retained by the creditor and on the basis of such fact he may claim that he is discharged from further liability. The giving of notice protects the creditor from a subsequent claim that he should have sold the collateral. Northern Fin. Corp. v.

Chatwood Coffee Shop, Inc., 4 U.C.C. Rep. Serv. 674 (1967, NY Sup).

Secured party in possession of collateral who fails to give written notice as to his proposed retention of collateral to debtor or to other secured party, has no legal right to retain collateral. In re Sports Autos, Inc., 117 Pitts. Legal J. 199 (Pa. 1969).

RESEARCH REFERENCES

ALR. Rights and duties of parties to conditional sales contract as to resale of repossessed property. 49 A.L.R.2d 15.

Construction and operation of UCC § 9-505(2) authorizing secured party in possession of collateral to retain it in satisfaction of obligation. 55 A.L.R.3d 651.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 628-644.

Default; acceptance of collateral in satisfaction of obligation, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:771-9:775.

Default; rights and remedies of debtor, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Form 9:791, 9:792.

Compulsory discharge of collateral; acceptance of collateral as discharge of obligation, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2180 through 253:2188.

CJS. 72 C.J.S., Pledges § 51 et seq.

Law Reviews. 1987 Mississippi Supreme Court Review, Corporate, contract and commercial law. 57 Miss. L. J. 467, August, 1987.

§ 75-9-622. Effect of acceptance of collateral.

(a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this article.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-623. Right to redeem collateral.

(a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral then due or past due (excluding any sums that would not be due except for an acceleration provision); and

(2) The reasonable expenses and attorney's fees described in Section 75-9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) Has collected collateral under Section 75-9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under Section 75-9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under Section 75-9-622.

SOURCES: Derived from former 1972 Code § 75-9-506 [Codes, 1942, § 41A:9-506; Laws, 1966, ch. 316, § 9-506, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former § 75-9-506.

6. In general.

I. Under Current Law.

1. In general.

A truck a bank repossessed between the time a debtor's Chapter 13 bankruptcy case was dismissed and the time the case was reinstated became property of the debtor's bankruptcy estate under 11 U.S.C.S. § 541 when the case was reinstated because the bank had not sold the truck and the debtor had the right under Miss. Code. Ann. § 75-9-623 to redeem possession, and because the debtor had the ability to make monthly payments he owed the bank under a note he signed and was making those payments through the Chapter 13 trustee, a decision granting the bank's motion for relief under 11 U.S.C.S. § 362 so it could sell the truck was not warranted. In re Bhakta, — Bankr. —, 2013 Bankr. LEXIS 5650 (Bankr. N.D. Miss. Aug. 23, 2013).

2.-5. [Reserved for future use.]

II. Under Former § 75-9-506.

6. In general.

Debtor, by tendering all past due sums and expenses, has right to reinstate secured installment obligation after notice of default and acceleration by creditor where creditor seeks only judgment and not possession of collateral, based on longstanding policy of Mississippi to protect collateral. Rankin Properties, Ltd. v. Woodhollow Estates, 714 F. Supp. 800 (S.D. Miss. 1989).

Debtor who, upon tendering purchase price to redeem mobile home which has been repossessed by secured creditor, refuses tender of new home which to rational person would be more valuable and desirable then one originally sold to and occupied by debtor, is not entitled to damages. Dungan v. Dick Moore, Inc., 463 So. 2d 1094 (Miss. 1985).

Debtor's right to redemption of personal property subject to security interest is governed by Uniform Commercial Code (§ 75-9-506), not by § 89-1-59, which applies only to secured installment transactions which are not covered by Code. Dungan v. Dick Moore, Inc., 463 So. 2d 1094 (Miss. 1985).

Under uniform commercial code Article 9, a security agreement may impose various charges that are not contained in the promissory note, with respect to which the security agreement was made, in the event of the debtor's default on the note. For example, under UCC § 9-504(1)(a) and § 9-506, the security agreement may provide for the debtor's payment, in the event of default, of the legal expenses and charges for repossession, storage, and redemption of the collateral. Furthermore, a valid acceleration clause in the security agreement can establish, in the event of default, a legal basis for collection from the debtor of both principal and accrued interest on the note. General Fin. Corp. v. Sprouse, 577 F.2d 989 (5th Cir. 1978).

Under UCC § 9-506, the debtor, in order to redeem, must tender fulfillment of "all obligations" as well as the "expenses reasonably incurred" by the secured party in retaking, holding, and preparing the collateral for disposition and in arranging for its sale. The secured party is obviously in a superior position to determine the amount of "all obligations" and "expenses reasonably incurred," and when he declares the amount due, the debtor or a party acting on his behalf is entitled to rely on that declaration. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

The words "unless otherwise agreed in writing after default" in UCC § 9-506 do not mean that an agreement to pay an amount less than the sum of the items set out in UCC § 9-506 must be in writing to constitute a valid redemption. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

Although UCC § 9-501(3)(d) provides that the debtor's right to redeem may not be varied or waived before default, the language "unless otherwise agreed in writing after default" in UCC § 9-506 does permit the debtor, after default, to waive or vary his right to redeem by an agreement in writing. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

Debtor's right under UCC § 9-506 to redeem collateral was not extinguished where secured party, after repossession of collateral, had not disposed of it or contracted for its disposal, and had also not effectively accepted it in satisfaction of debtor's obligation. Credit Alliance Corp. v. Adams Constr. Corp., 570 S.W.2d 283 (Ky. 1978).

In determining whether defaulting Small Business Administration debtor had right to redeem collateral given to secure loan made by creditor, which right was waived by express provision in both debtor's mortgage on certain realty and also in security agreement covering certain personal property of debtor, in absence of federal statutory law on subject, question whether language in mortgage and security agreement waiving such right or Illinois statute (UCC § 9-506) prohibiting such waiver should govern would be determined by weighing all relevant factors, including intent of parties and interest of both federal and state governments. Of these factors, the most important is whether state law can be given effect without either conflicting with federal policy or destroying needed uniformity in pertinent federal law in its operation within the various states. United States v. Marshall, 431 F. Supp. 888 (N.D. Ill. 1977).

In suit in which Small Business Administration (creditor) obtained summary judgment as to debtor's liability under mortgage on certain realty and under security agreement covering certain personal property, which instruments were executed to secure loan made to debtor, (1) where both mortgage and security agreement provided that debtor waived right to redeem collateral; (2) where there was no federal statutory law on right of Small Business Administration debtors to redeem their property; and (3) where as result of Illinois' adoption of UCC § 9-506, debtor's right of redemption could not be waived in Illinois in either mortgage or security agreement, validity of debtor's waiver would be determined under Illinois law since (1) Illinois' interest in protecting debtors' redemption rights did not conflict with federal policy underlying Small Business Administration Act; (2) Illinois system protected debtor by posing economic threat to prospective purchasers at foreclosure sale, including plaintiff in present case, that artificially low bid could be defeated by redemption; (3) allowing right of redemption would encourage policy of helping small businessmen to survive foreclosure; and (4) such policy was more important than need for uniform application of Small Business Administration program. United States v. Marshall, 431 F. Supp. 888 (N.D. Ill. 1977).

In action by buyer for damages for wrongful sale of repossessed automobile against dealer who resold vehicle and bank which had security interest therein, where buyer requested bank employee, while employee was repossessing vehicle on June 9, 1975, to hold vehicle for ten days to allow buyer to redeem it, and employee agreed to such request and orally informed dealer of buyer's intention to redeem; where bank on June 9, 1975, notified buyer by letter that efforts to resell vehicle would commence on June

19, 1975, and would continue until it was resold; where such letter also notified buyer of his right to redeem vehicle before its resale, but did not indicate where resale would take place; and where buyer received such letter on June 14, 1975, which was date on which dealer resold vehicle to third person, (1) bank as secured party at time of default, repossession, and resale violated its duty under UCC § 9-504(3) to give buyer reasonable notice of time and place of such resale and thus could have been found by jury to be liable under UCC § 9-507(1) for not effecting "commercially reasonable" disposition of vehicle under UCC § 9-504(3); (2) bank also could have been found liable for violation of UCC § 9-506 for not permitting buyer to redeem vehicle; and (3) jury could further have found that connection existed between bank and dealer in their prior course of dealing and their conduct in present transaction which demonstrated community of action and interest that would render both liable to buyer, particularly in view of evidence sufficient to show that bank had adopted dealer's actions by accepting dealer's check, based on proceeds of resale, for full payment of balance owed by buyer on vehicle. Wells v. Central Bank, 347 So. 2d 114 (Ala. Civ. App. 1977).

Where evidence in conversion action showed that plaintiff purchased motorcycle under instalment contract giving seller security interest in vehicle; that seller assigned contract for value and with full recourse to bank, which filed contract of record on July 31, 1972; that purchaser defaulted in making payments in October, 1973; that seller paid balance due on vehicle to bank and bank orally reassigned contract to seller on April 4, 1974; that seller then paid third party's bill for repairs to vehicle and repossessed vehicle from such party; and that purchaser instituted action against seller after failing to repay seller for amounts paid out on vehicle, (1) seller on buying contract back from bank became secured party entitled to self-help repossession under UCC § 9-503; (2) seller did not convert vehicle by paying repair bill and repossessing vehicle, since such action was authorized by debtor-redemption provisions of UCC § 9-506; and (3) conversion claim based on seller's alleged violation of UCC § 9-505 also failed because it was not made until final argument at trial. Eustice v. Brazille, 567 P.2d 92 (Okla. 1977).

Attorney's fees incurred in enforcing the security interest are properly allowed as authorized by the Code and where also authorized by the particular security agreement. Whitson v. Yaffe Iron & Metal Corp., 385 F.2d 168 (8th Cir. Ark. 1967).

Where the debtor's interest in the collateral is sold at foreclosure sale the buyer has only such right of possession and of retention as was possessed by the debtor. Scholz Homes, Inc. v. Joseph, 4 U.C.C. Rep. Serv. 1104 (1967, NY Co Ct).

A provision by which the debtor waives the right to redeem the collateral is void. Indianapolis Morris Plan Corp. v. Karlen, 4 U.C.C. Rep. Serv. 791 (1967, NY Sup).

A security holder who disposes of collateral without notice denies to the debtor his right of redemption which is provided to him in the instant section. Skeels v. Universal C.I.T. Credit Corp., 222 F. Supp. 696 (W.D. Pa. 1963), vacated on other grounds, 335 F.2d 846 (3d Cir. Pa. 1964).

Where a finance company failed to give the automobile dealer notice where it sold automobiles removed from the dealer's place of business, the finance company could not recover from the dealer for losses sustained on sales of automobiles and the expenses of such sales. Skeels v. Universal C.I.T. Credit Corp., 222 F. Supp. 696 (W.D. Pa. 1963), vacated on other grounds, 335 F.2d 846 (3d Cir. Pa. 1964).

Where an assignee of a conditional sales contract which repossessed an automobile on conditional buyer's default in making of payments sold the automobile four days after repossession in violation of Mass GL c. 255, § 11, there was a breach of contract by such assignee, precluding the maintenance of an action for deficiency predicated upon the resale. Associates Disct. Corp. v. Girard, 19 Mass. App. Dec. 95 (1960).

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 475, 476 et seq.

Rights and remedies of debtor; redemption of collateral, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:801, 9:802.

Right of debtor to redeem collateral, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2189 through 253:2191.

CJS. 79 C.J.S., Secured Transactions § 184.

72 C.J.S., Pledges §§ 42, 50.

§ 75-9-624. Waiver.

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 75-9-611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under Section 75-9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 75-9-623 only by an agreement to that effect entered into and authenticated after default.

SOURCES: Derived from former 1972 Code §§ 75-9-504 [Codes, 1942, § 41A:9-504; Laws, 1966, ch. 316, § 9-504; Laws, 1970, ch. 272, § 1; Laws, 1977, ch. 452, § 34, eff from and after April 1, 1978], 75-9-505 [Codes, 1942, § 41A:9-505; Laws, 1966, ch. 316, § 9-505; Laws, 1977, ch. 452, § 35, eff from and after April 1, 1978], and 75-9-506 [Codes, 1942, § 41A:9-506; Laws, 1966, ch. 316, § 9-506, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-506.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-506.

6. In general.

Debtor, by tendering all past due sums and expenses, has right to reinstate secured installment obligation after notice of default and acceleration by creditor where creditor seeks only judgment and not possession of collateral, based on longstanding policy of Mississippi to protect collateral. Rankin Properties, Ltd. v. Woodhollow Estates, 714 F. Supp. 800 (S.D. Miss. 1989).

Debtor who, upon tendering purchase price to redeem mobile home which has been repossessed by secured creditor, refuses tender of new home which to rational person would be more valuable and desirable then one originally sold to and occupied by debtor, is not entitled to damages. Dungan v. Dick Moore, Inc., 463 So. 2d 1094 (Miss. 1985).

Debtor's right to redemption of personal property subject to security interest is governed by Uniform Commercial Code (§ 75-9-506), not by § 89-1-59, which applies only to secured installment transactions which are not covered by Code. Dungan v. Dick Moore, Inc., 463 So. 2d 1094 (Miss. 1985).

Under uniform commercial code Article 9, a security agreement may impose various charges that are not contained in the promissory note, with respect to which the security agreement was made, in the event of the debtor's default on the note. For example, under UCC § 9-504(1)(a) and § 9-506, the security agreement may provide for the debtor's payment, in the event of default, of the legal expenses and charges for repossession, storage, and redemption of the collateral. Furthermore, a valid acceleration clause in the security agreement can establish, in the event of default, a legal basis for collection from the debtor of both principal and accrued interest on the note. General Fin. Corp. v. Sprouse, 577 F.2d 989 (5th Cir. 1978).

Under UCC § 9-506, the debtor, in order to redeem, must tender fulfillment of "all obligations" as well as the "expenses reasonably incurred" by the secured party in retaking, holding, and preparing the collateral for disposition and in arranging for its sale. The secured party is obviously in a superior position to determine the amount of "all obligations" and "expenses reasonably incurred," and when he declares the amount due, the debtor or a party acting on his behalf is entitled to rely on that declaration. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

The words "unless otherwise agreed in writing after default" in UCC § 9-506 do not mean that an agreement to pay an amount less than the sum of the items set out in UCC § 9-506 must be in writing to constitute a valid redemption. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

Although UCC § 9-501(3)(d) provides that the debtor's right to redeem may not be varied or waived before default, the language "unless otherwise agreed in writing after default" in UCC § 9-506 does permit the debtor, after default, to waive or vary his right to redeem by an agreement in writing. Draughon v. General Fin. Credit Corp., 362 So. 2d 880 (Ala. 1978).

Debtor's right under UCC § 9-506 to redeem collateral was not extinguished where secured party, after repossession of collateral, had not disposed of it or contracted for its disposal, and had also not effectively accepted it in satisfaction of debtor's obligation. Credit Alliance Corp. v. Adams Constr. Corp., 570 S.W.2d 283 (Ky. 1978).

In determining whether defaulting Small Business Administration debtor had right to redeem collateral given to secure loan made by creditor, which right was waived by express provision in both debtor's mortgage on certain realty and also in security agreement covering certain personal property of debtor, in absence of federal statutory law on subject, question whether language in mortgage and security agreement waiving such right or Illinois statute (UCC § 9-506) prohibiting such waiver should govern would be determined by weighing all relevant factors, including intent of parties and interest of both federal and state governments. Of these factors, the most important is whether state law can be given effect without either conflicting with federal policy or destroying needed uniformity in pertinent federal law in its operation within the various states. United States v. Marshall, 431 F. Supp. 888 (N.D. Ill. 1977).

In suit in which Small Business Administration (creditor) obtained summary judgment as to debtor's liability under mortgage on certain realty and under security agreement covering certain personal property, which instruments were executed to secure loan made to debtor, (1) where both mortgage and security agreement provided that debtor waived right to redeem collateral; (2) where there was no federal statutory law on right of Small Business Administration debtors to redeem their property; and (3) where as result of Illinois' adoption of UCC § 9-506, debtor's right of redemption could not be waived in Illinois in either mortgage or security agreement, validity of debtor's waiver would be determined under Illinois law since (1) Illinois' interest in protecting debtors' redemption rights did not conflict with federal policy underlying Small Business Administration Act; (2) Illinois system protected debtor by posing economic threat to prospective purchasers at foreclosure sale, including plaintiff in present case, that artificially low bid could be defeated by redemption; (3) allowing right of redemption would encourage policy of helping small businessmen to survive foreclosure; and (4) such policy was more important than need for uniform application of Small Business Administration program. United States v. Marshall, 431 F. Supp. 888 (N.D. Ill. 1977).

In action by buyer for damages for wrongful sale of repossessed automobile against dealer who resold vehicle and bank which had security interest therein, where buyer requested bank employee, while employee was repossessing vehicle on June 9, 1975, to hold vehicle for ten days to allow buyer to redeem it, and employee agreed to such request and orally informed dealer of buyer's intention to redeem; where bank on June 9, 1975, notified buyer by letter that efforts to resell vehicle would commence on June 19, 1975, and would continue until it was resold; where such letter also notified buyer of his right to redeem vehicle before its resale, but did not indicate where resale would take place; and where buyer received such letter on June 14, 1975, which was date on which dealer resold vehicle to third person, (1) bank as secured party at time of default, repossession, and resale violated its duty under UCC § 9-504(3) to give buyer reasonable notice of time and place of such resale and thus could have been found by jury to be liable under UCC § 9-507(1) for not effecting "commercially reasonable" disposition of vehicle under UCC § 9-504(3); (2) bank also could have been found liable for violation of UCC § 9-506 for not permitting buyer to redeem vehicle; and (3) jury could further have found that connection existed between bank and dealer in their prior course of dealing and their conduct in present transaction which demonstrated community of action and interest that would render both liable to buyer, particularly in view of evidence sufficient to show that bank had adopted dealer's actions by accepting dealer's check, based on proceeds of resale, for full payment of balance owed by buyer on vehicle. Wells v. Central Bank, 347 So. 2d 114 (Ala. Civ. App. 1977).

Where evidence in conversion action showed that plaintiff purchased motorcycle under instalment contract giving seller security interest in vehicle; that seller assigned contract for value and with full recourse to bank, which filed contract of record on July 31, 1972; that purchaser defaulted in making payments in October, 1973; that seller paid balance due on vehicle to bank and bank orally reassigned contract to seller on April 4, 1974; that seller then paid third party's bill for repairs to vehicle and repossessed vehicle from such party; and that purchaser instituted action against seller after failing to repay seller for amounts paid out on vehicle, (1) seller on buying contract back from bank became secured party entitled to self-help repossession under UCC § 9-503; (2) seller did not convert vehicle by paying repair bill and repossessing vehicle, since such action was authorized by debtor-redemption provisions of UCC § 9-506; and (3) conversion claim based on seller's alleged violation of UCC § 9-505 also failed because it was not made until final argument at trial. Eustice v. Brazille, 567 P.2d 92 (Okla. 1977).

Attorney's fees incurred in enforcing the security interest are properly allowed as authorized by the Code and where also authorized by the particular security agreement. Whitson v. Yaffe Iron & Metal Corp., 385 F.2d 168 (8th Cir. Ark. 1967).

Where the debtor's interest in the collateral is sold at foreclosure sale the buyer has only such right of possession and of retention as was possessed by the debtor. Scholz Homes, Inc. v. Joseph, 4 U.C.C. Rep. Serv. 1104 (1967, NY Co Ct).

A provision by which the debtor waives the right to redeem the collateral is void. Indianapolis Morris Plan Corp. v. Karlen, 4 U.C.C. Rep. Serv. 791 (1967, NY Sup).

A security holder who disposes of collateral without notice denies to the debtor his right of redemption which is provided to him in the instant section. Skeels v. Universal C.I.T. Credit Corp., 222 F. Supp. 696 (W.D. Pa. 1963), vacated on other grounds, 335 F.2d 846 (3d Cir. Pa. 1964).

Where a finance company failed to give the automobile dealer notice where it sold automobiles removed from the dealer's place of business, the finance company could not recover from the dealer for losses sustained on sales of automobiles and the expenses of such sales. Skeels v. Universal C.I.T. Credit Corp., 222 F. Supp. 696 (W.D. Pa. 1963), vacated on other grounds, 335 F.2d 846 (3d Cir. Pa. 1964).

Where an assignee of a conditional sales contract which repossessed an automobile on conditional buyer's default in making of payments sold the automobile four days after repossession in violation of Mass GL c. 255, § 11, there was a breach of contract by such assignee, precluding the maintenance of an action for deficiency predicated upon the resale. Associates Disct. Corp. v. Girard, 19 Mass. App. Dec. 95 (1960).

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 68A Am. Jur. 2d, Secured Transactions §§ 475, 476 et seq.

Rights and remedies of debtor; redemption of collateral, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:801, 9:802.

Right of debtor to redeem collateral, 19A Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 9 — Secured Transactions, §§ 253:2189 through 253:2191.

CJS. 79 C.J.S., Secured Transactions § 184.

72 C.J.S., Pledges §§ 42, 50.

SUBPART 2.

NONCOMPLIANCE WITH ARTICLE.

SEC.
75-9-625. Remedies for secured party's failure to comply with article.
75-9-626. Action in which deficiency or surplus is in issue.
75-9-627. Determination of whether conduct was commercially reasonable.
75-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

§ 75-9-625. Remedies for secured party's failure to comply with article.

(a) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 75-9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit

service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) A debtor whose deficiency is eliminated under Section 75-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 75-9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover Five Hundred Dollars ($500.00) in each case from a person that:

(1) Fails to comply with Section 75-9-208;

(2) Fails to comply with Section 75-9-209;

(3) Files a record that the person is not entitled to file under Section 75-9-509(a) and fails to file a termination statement with respect to the filed record within ten (10) days after receiving an authenticated demand by the debtor, consumer obligor, or person named as a debtor in the filed record;

(4) Fails to cause the secured party of record to file or send a termination statement as required by Section 75-9-513(a) or (c);

(5) Fails to comply with Section 75-9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with Section 75-9-616(b)(2).

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, Five Hundred Dollars ($500.00) in each case from a person that, without reasonable cause, fails to comply with a request under Section 75-9-210. A recipient of a request under Section 75-9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 75-9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

SOURCES: Derived from former 1972 Code § 75-9-507 [Codes, 1942, § 41A:9-507; Laws, 1966, ch. 316, § 9-507, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Injunctions, generally, see § 11-13-1 et seq.
Obligation of good faith, see § 75-1-203.

JUDICIAL DECISIONS

I. Under Current Law.

1.-4. [Reserved for future use.]
5. Repossession.

II. Under Former § 75-9-507.

6. In general.
7. Parties and standing.

8. Pleadings.
9. Damages.
10. —Measure and elements.
11. —Evidence and burden of proof; secured party.
12. —Evidence and burden of proof; debtor.
13. Deficiency judgment as affected by non-compliance.
14. —Non-compliance as bar.
15. —Setoff of debtor's damages.
16. —Evidence and burden of proof.
17. Commercial reasonableness.
18. —Particular dispositions reasonable.
19. —Particular dispositions not reasonable.
20. —Judicially-approved dispositions.
21. —Evidence and burden of proof.

I. Under Current Law.

1.-4. [Reserved for future use.]

5. Repossession.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Ann. § 75-9-625; the judge blocked the tow truck's travel and attempted to use his office to intimidate officers at the scene. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

II. Under Former § 75-9-507.

6. In general.

Where on September 22, 1976, bank repossessed automobile given as collateral for loan to debtor and where, as of June 17, 1977, bank had not disposed of collateral and debtor had repaid more than 60 per cent of loan, debtor as provided by UCC § 9-505(1) was entitled to recover from bank either for conversion or under UCC § 9-507(1), governing creditor's liability for failure to comply with provisions of UCC Article 9. Marshall v. Fulton Nat'l Bank, 145 Ga. App. 190, 243 S.E.2d 266 (1978).

Although strict compliance with the written notice provisions of UCC § 9-505(2) may not be essential where the debtor is claiming that the secured party has retained the collateral to satisfy the obligation, the creditor should in some way manifest an intent to accept the collateral in full satisfaction of such obligation. The better interpretation of UCC § 9-505(2) is that it is a provision drafted for the benefit of the secured party by allowing him the option to retain the collateral in satisfaction of the debt in certain specified situations where he manifests that intent. A debtor who has been damaged by improper retention of collateral has a remedy in UCC § 9-507(1), which allows him to recover from the secured party any loss caused by a failure to comply with any of the default provisions of Part 5 of UCC Article 9. If the loss experienced by the debtor equals the amount due under the obligation, the secured party, of course, will be entitled to no recovery. The debtor is sufficiently protected by UCC § 9-507(1) without employing a strained reading of UCC § 9-505(2) to imply retention of collateral in satisfaction of the debt where no such result was intended by the secured party. Nelson v. Armstrong, 99 Idaho 422, 582 P.2d 1100 (1978).

In light of remedy afforded by UCC § 9-507 to conditional vendees, there is no reason for extending the doctrine of conversion (custodia legis) to a conditional vendor. Brunswick Corp. v. J & P, Inc., 424 F.2d 100 (10th Cir. Okla. 1970).

An actual lease of personal property which does not give the lessee any right to acquire or purchase is not a security device and accordingly, the lessee's rights after the lessor's repossession upon his default are not determined by Article 9 of the Code. Franklin Nat'l Bank v. Katzel, 4 U.C.C. Rep. Serv. 124 (1967, NY Sup).

Since the UCC has abolished the technical distinctions between the various security devices, the federal bankruptcy courts should no longer feel compelled to engage in the purely theoretical exercise of locating "title"; nor should considerations of where "title lies" influence the courts in the exercise of their equitable discretion in ruling upon a security holder's petition for reclamation of collateral. In re Yale Express Sys., 370 F.2d 433 (2d Cir. N.Y. 1966).

7. Parties and standing.

Sellers of tavern business who had valid, but unperfected, security interest in assets of business presented prima facie case of loss caused by lack of notice under UCC § 9-507(1) where banks that had subsequent, but perfected, security interests in assets of tavern business foreclosed and sold assets to third party, where there was undisputed testimony that banks and third party were aware of sellers' security interest and banks in fact agreed to indemnify third party against claims arising from original security agreement, where banks failed to give notice as required by UCC § 9-504, and where debt owing to banks at time of foreclosure was approximately $45,000, but foreclosure sale grossed $110,000, and difference was unaccounted for. Young v. Golden State Bank, 39 Colo. App. 45, 560 P.2d 855 (1977).

Where there were questions of fact as to (1) whether secured party, by holding collateral for a period of time in excess of five years, had exceeded reasonable length of time secured party may hold collateral before it is deemed to have exercised its right to retain that collateral in satisfaction of obligation and (2) whether secured party knew that stock belonged to party other than its debtor, motion by secured party for summary judgment would be denied inasmuch as favorable disposition of these two issues would entitle loan guarantor who had pledged stock as collateral for loan to recover damages under UCC § 9-507 against secured party for its violation of notice guarantees contained in UCC §§ 9-112(b) and 9-505(2). Shultz v. Delaware Trust Co., 360 A.2d 576 (Del. Super. 1976).

Plaintiff was entitled to notification of public sale of collateral in which both plaintiff and bank had security interest, and bank was therefore liable for any damages which plaintiff sustained by bank's failure to provide such notice, where property described in plaintiff's financing statement reasonably identified collateral, and where such financing statement was therefore sufficient to put bank on notice of plaintiff's claim. Stephens v. Bank of Camilla, 133 Ga. App. 210, 210 S.E.2d 358 (1974), aff'd, 234 Ga. 293, 216 S.E.2d 71 (1975).

A person offering to pay a higher price for part of the collateral does not have any standing to intervene in a proceeding to determine the commercial reasonableness of the sale of the collateral. Old Colony Trust Co. v. Penrose Indus. Corp., 387 F.2d 939 (3d Cir. Pa. 1968), cert. denied, 392 U.S. 927, 88 S. Ct. 2283, 20 L. Ed. 2d 1385 (1968).

8. Pleadings.

Under UCC §§ 9-504 and 9-507(2), where individual's guaranty of corporation's demand notes specifically authorized sale of collateral without notice to or further assent from guarantors, sale of collateral was approved by corporation's referee in bankruptcy and no objection was made by trustee in bankruptcy or guarantor at time of sale, naked assertion of impropriety in sale could not overcome presumption that sale of collateral was effectuated in commercially reasonable fashion. First Nat'l City Bank v. Cooper, 50 A.D.2d 518 (1st Dep't 1975).

Where the secured party after repossessing a boat sold it without giving specific notice to the purchasers as to the time and place of sale, the purchasers were entitled to recover on their counterclaim based on a failure to comply with this section, even though poorly pleaded, where the secured party had been given sufficient notice that the section was involved. It was not necessary that the statute be specifically pleaded, and that the boat was consumer goods might be inferred from the uncontradicted testimony of the purchasers as to their occupations. Atlas Credit Corp. v. Dolbow, 193 Pa. Super. 649, 165 A.2d 704 (1960).

9. Damages.

UCC § 9-507(1) does not entitle a debtor, simply because the collateral is consumer goods, to at least a minimum recovery where the creditor gives notice of a proposed disposition of collateral that is commercially unreasonable but then fails to dispose of it. The statute is not intended to punish a creditor and recompense a debtor unless the debtor has been injured. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

Even if secured party failed to comply with provisions of UCC § 9-504(3), debtor would not be discharged from all liability under contract, but would rather be entitled under UCC § 9-507(1) to recover for damages caused thereby. Stanchi v. Kemp, 48 A.D.2d 973 (3d Dep't 1975).

Where automobile dealer did not give debtors notice of sale of repossessed automobile, it was liable to debtors for damages as provided in Code § 9-507(1). Community Mgt. Ass'n v. Tousley, 32 Colo. App. 33, 505 P.2d 1314 (1973).

Where secured party gave no notice of private sale of repossessed collateral, debtors could recover any loss caused by secured party's failure to comply with UCC. Crowder v. Allied Inv. Co., 190 Neb. 487, 209 N.W.2d 141 (1973).

Where finance company failed to give notice of sale of repossessed automobile as required by § 9-504(3), suit for a deficiency judgment against debtor was remanded for determination of the amount due the company, if any, after allowing the debtor the off sets provided by this section. Mallicoat v. Volunteer Fin. & Loan Corp., 57 Tenn. App. 106, 415 S.W.2d 347 (1966).

Where the conditional buyer of a secondhand pickup truck was not given notice of sale where such notice was required under § 9-504(3) he was entitled to recover as a set-off or counterclaim the amount of his resulting damages in an action brought against him for a deficiency judgment. Abbott Motors, Inc. v. Ralston, 28 Mass. App. Dec. 35 (1964).

10. —Measure and elements.

Failure of secured party after repossession of automobile to give debtor notice of private sale as required by UCC § 9-504(3) did not work absolute forfeiture of debtor's indebtedness to secured party, since security agreement provided that debtor would be liable for deficiency after application of proceeds of sale as provided by UCC § 9-504(2); failure to give notice did, however, entitle debtor to recover from secured party any actual loss caused by such failure and, in case of sale of consumer goods such as automobile, debtor also had right to recover "amount not less than the credit service charge plus ten per cent (10%) of the principal amount of the debt or the time price differential plus ten per cent (10%) of the cash price" pursuant to UCC § 9-507(1). Furthermore, failure to give required statutory notice imposed upon creditor burden of establishing that sale was made in conformity with "reasonable commercial practices" as required by UCC § 9-507(2) and that sum received for chattel represented its fair market value. Walker v. V.M. Box Motor Co., 325 So. 2d 905 (Miss. 1976).

Where (1) plaintiff and his wife purchased used mobile home, (2) plaintiff's father-in-law cosigned security agreement and note as accommodation maker, (3) plaintiff defaulted on payments, (4) plaintiff's father-in-law, with secured party's consent, obtained possession of home, paid off balance due on note, and made repairs on home, (5) secured party obtained repossession title in its name, released security agreement, and transferred repossession title to plaintiff's father-in-law without notifying plaintiff, who was in jail, of either the account delinquency or the subsequent transfer of title, and (6) after plaintiff's release from jail, plaintiff's father-in-law sold home with plaintiff's consent, but did not give accounting of sale or proceeds therefrom to plaintiff, court held (1) that plaintiff did not waive right to notice of disposition of home under UCC § 9-504(3), since UCC § 9-501(3)(b) specifically states that such right cannot be waived; (2) plaintiff's father-in-law, as accommodation maker of note, did not fall within scope of UCC § 9-504(5), dealing with transfers of collateral that are not sales and thus do not require notice to debtor; (3) UCC § 9-504(5) did not contemplate complete extinguishment of plaintiff's right to home, as was done in present case by secured party's transfer of repossession title to plaintiff's father-in-law; and (4) under UCC § 9-507(1) and UCC § 1-103, plaintiff was entitled to damages for conversion of home on basis of benefit to defendant wrongdoers, rather than on basis of allowing full value of home as enhanced by wrongdoers. Western Nat'l Bank v. Harrison, 577 P.2d 635 (Wyo. 1978).

Common-law rule that failure to notify debtor of sale of collateral does not release debtor but merely affords him credit for any loss caused by creditor's failure to notify, is codified in UCC § 9-507(1). Cessna Fin. Corp. v. Meyer, 575 P.2d 1048 (Utah 1978).

UCC § 9-507(1) provides that a secured party who proposes to dispose of collateral in an unreasonable manner may be restrained from doing so by court order. The statute also provides for damages where an unreasonable disposition has been effected and, in the case of an unreasonable disposition of consumer goods, prescribes a minimum recovery. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

Under UCC § 9-507(1), the recovery of damages is measured by the economic loss that was sustained by reason of a failure to comply with the default provisions of Article 9. Bundrick v. First Nat'l Bank, 570 S.W.2d 12 (Tex. Civ. App. 1978), writ ref'd n.r.e., (Nov. 29, 1978).

Although strict compliance with the written notice provisions of UCC § 9-505(2) may not be essential where the debtor is claiming that the secured party has retained the collateral to satisfy the obligation, the creditor should in some way manifest an intent to accept the collateral in full satisfaction of such obligation. The better interpretation of UCC § 9-505(2) is that it is a provision drafted for the benefit of the secured party by allowing him the option to retain the collateral in satisfaction of the debt in certain specified situations where he manifests that intent. A debtor who has been damaged by improper retention of collateral has a remedy in UCC § 9-507(1), which allows him to recover from the secured party and loss caused by a failure to comply with any of the default provisions of Part 5 of UCC Article 9. If the loss experienced by the debtor equals the amount due under the obligation, the secured party, of course, will be entitled to no recovery. The debtor is sufficiently protected by UCC § 9-507(1) without employing a strained reading of UCC § 9-505(2) to imply retention of collateral in satisfaction of the debt where no such result was intended by the secured party. Nelson v. Armstrong, 99 Idaho 422, 582 P.2d 1100 (1978).

Secured party's failure to give debtor notice of time and place of sale of collateral, as required by UCC — 9-504(3), will not release debtor from any deficiency that may exist after the sale. In such case, however, debtor under UCC § 9-507(1) may receive credit or recover damages for any loss that he sustained as result of such failure to notify. Zions First Nat'l Bank v. Hurst, 570 P.2d 1031 (Utah 1977).

Although UCC does not explicitly allow punitive damages for commercially unreasonable sale, if that right exists outside Code, it is retained or permitted through UCC § 1-106, and since UCC permits recovery of damages in action for conversion of repossessed property, punitive damages are recoverable in such action where secured party's acts are wanton, malicious, and intentional; thus, evidence that secured party permitted third person to borrow collateral belonging to debtor prior to default in order that third party could open competing business, that bank did not give proper notice of sale and on sale date did not even attempt sale, that secured party retained collateral after default for several months without crediting it against debtor's note, and that final sale was made to third person for price less than one fourth of stipulated value of property at time of sale, was sufficient to support award of punitive damages. Davidson v. First Bank & Trust Co., 609 P.2d 1259 (Okla. 1976).

Where stock that was security for loan was surrendered by escrow agent to secured party following debtor's default, at which time its market value was less than amount due on loan, and where secured party sought to recover deficiency, but retained stock and had it registered in secured party's name, actions of secured party did not constitute "otherwise disposing of collateral" within meaning of UCC § 9-504(1) and debtor was entitled to relief under UCC § 9-507 when stock subsequently appreciated in value to amount in excess of secured loan. In re Copeland, 531 F.2d 1195 (3d Cir. Del. 1976).

Where testimony was in substantial agreement that there was no widespread market for used restaurant equipment, particularly kind specifically designed for use of particular franchise, and all parties testified that they knew of no standard price quotations for such equipment, such collateral was not of type that could have been validly purchased by secured party at private sale under UCC § 9-504(3) and such purchase by secured party violated UCC §§ 9-501 and 9-507; debtor was not entitled to statutory penalty under UCC § 9-507(1) since that minimum recovery applies only to cases involving consumer goods under UCC § 9-109 and used restaurant equipment did not fall within that definition, rather, presumption would be indulged that collateral was worth at least amount of debt, shifting to secured party burden of proving amount that should reasonably have been obtained through sale conducted according to law and, taken in that light, evidence supported determination of trial court that price obtained upon sale of collateral was reasonable and that debtor suffered no compensable damage, entitling secured party to deficiency judgment. Wirth v. Heavey, 508 S.W.2d 263 (Mo. Ct. App. 1974).

Where secured party and cosigner of note failed after repossession of collateral to proceed in accordance with UCC provisions for disposition of collateral upon default, debtor was entitled to recover as damages value of security less debt. Farmers State Bank v. Otten, 87 S.D. 161, 204 N.W.2d 178 (1973).

Statutory damages under UCC § 9-507(1) are not cumulative for each asserted violation of Part 5 of UCC Article 9 and may be recovered only once. Crosby v. Basin Motor Co., 83 N.M. 77, 488 P.2d 127 (Ct. App. 1971).

11. —Evidence and burden of proof; secured party.

Where secured creditor who has liquidated his security fails to sustain his burden of proving that due notice of sale of collateral as provided by law was given to debtor and that sale of collateral was commercially reasonable, debtor may still recover deficiency judgment by proving amount of debt, fair value of security, and resulting deficiency. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Creditor's failure to dispose of collateral as required by Code raised presumption that collateral was worth at least amount of debt, which placed upon creditor burden of overcoming such presumption by proving market value of collateral by evidence other than resale price. Hodges v. Norton, 29 N.C. App. 193, 223 S.E.2d 848 (1976).

Used restaurant equipment for which there was no widespread market was presumed to be worth at least amount of debt, and secured party had burden of proving that amount received for such equipment was reasonable. Wirth v. Heavey, 508 S.W.2d 263 (Mo. Ct. App. 1974).

Where secured party did not comply with Code provision regarding notice of sale after repossession, usual measure of damages is difference between what collateral was sold for and what it would have been sold for if proper notice had been given; burden of proving value of collateral received at sale is on secured party in deficiency action; held, where burden is not met, value is presumed to be at least amount of debt. T & W Ice Cream, Inc. v. Carriage Barn, Inc., 107 N.J. Super. 328, 258 A.2d 162 (L. Div. 1969).

Where a debtor has the right to recover any loss caused by failure of a secured party to comply with statutory provisions in disposing of the collateral, there is a presumption the collateral is worth at least the amount of the debt in such cases, so the secured party has the burden of proving the amount that should reasonably have been obtained through a sale. Barker v. Horn, 245 Ark. 315, 432 S.W.2d 21 (1968).

12. —Evidence and burden of proof; debtor.

Debtor who alleged that secured party had sold repossessed collateral without sending debtor notice required by UCC § 9-504(3), but who did not show that collateral was consumer goods or that he had sustained identifiable loss as result of secured party's failure to notify, was not entitled to penalty imposed by UCC § 9-507(1) for such failure to notify. Hensley v. Lubbock Nat'l Bank, 561 S.W.2d 885 (Tex. Civ. App. 1978).

Action by lessor of computer for deficiency following lessee's default on written lease agreement was not precluded by fact that lessor failed to give lessee notice of resale following repossession as required by UCC § 9-504(3); lessor was entitled to recover entire balance due under lease, where lessee offered no proof of loss resulting from lessor's failure to give notice as provided in UCC § 9-507. Leasco Computer, Inc. v. Sheridan Indus., Inc., 82 Misc. 2d 897 (1975).

Despite insufficiency of notice of sale under UCC § 9-504(3) for failure to specify time after which private sale was to be made, secured party was entitled to deficiency judgment against defendant purchaser of snowmobiles who defaulted on payment where defendant-purchaser failed to establish any damage by virtue of "method, manner, time and terms" of sale under UCC § 9-507(2) because competitive bid method utilized by secured party was commercially reasonable under circumstances, defendant had voluntarily relinquished possession of collateral because he had been unable to sell snowmobiles, purpose of relinquishment was to allow plaintiff secured party to sell them, and defendant had notice of plaintiff's intention to sell snowmobiles, made no response, and was financially unable to take any action. Commercial Credit Corp. v. Wollgast, 11 Wash. App. 117, 521 P.2d 1191 (1974), review denied, 84 Wash. 2d 1004 (1974).

Where corporate debtor obtained numerous pieces of equipment from secured party in four distinct lots, each subject to distinct, but identical, security agreement, where two of these security agreements were guaranteed by individual guarantors, and where, upon default of all four agreements, secured party repossessed all four lots of equipment and sold them as single unit to single purchaser, secured party was not precluded by UCC from collecting deficiency merely because collateral was not sold in lots corresponding to separate lots in which collateral was first acquired by corporate debtor; even if creditor disposes of collateral in violation of UCC, debtor is not entitled to completely avoid its obligations to creditor, but is only entitled to recover "any loss" occasioned by secured party's failure to comply with appropriate provisions of UCC, and individual guarantors offered no evidence that any loss was suffered by corporate debtor because of form of disposition; furthermore, UCC does not require that repossessed collateral be disposed of in any particular manner and there was no evidence to show that sale of collateral in single lot was not disposition made in good faith and in commercially reasonable manner; however, secured party was not entitled to apply proceeds of sale, first to balances due on two security agreements which were not guaranteed, totally satisfying those obligations, and then to balances due on guaranteed security agreements leaving deficiency on them, but was required under UCC § 9-504(1)(b) to apply proceeds of disposition to satisfaction of indebtedness secured by security interest under which disposition was made. Wilson Leasing Co. v. Seaway Pharmacal Corp., 53 Mich. App. 359, 220 N.W.2d 83 (1974).

13. Deficiency judgment as affected by non-compliance.

In action by bank to recover deficiency judgment on promissory notes secured by lien on personal property, defendants were not prohibited by terms of Uniform Commercial Code from raising issue, by way of defense or partial defense, that collateral was not sold in commercially reasonable manner. Christian v. First Nat'l Bank, 531 S.W.2d 832 (Tex. Civ. App. 1975), writ ref'd n.r.e., (Apr. 21, 1976).

Creditor's failure to give notice to debtor of sale of repossessed collateral does not necessarily result in forfeiture of creditor's right to deficiency. Grant County Tractor Co. v. Nuss, 6 Wash. App. 866, 496 P.2d 966 (1972), review denied, 81 Wash. 2d 1001 (1972).

14. —Non-compliance as bar.

Where secured party failed to give required notice of sale of collateral and failed to conduct sale in commercially reasonable manner, this failure barred deficiency judgment where the failure was raised as affirmative defense. Atlas Thrift Co. v. Horan, 27 Cal. App. 3d 999, 59 A.L.R.3d 389 (3d Dist. 1972).

15. —Setoff of debtor's damages.

Where (1) creditor, after debtor's default in making payments on two trucks, sent debtor notice in April, 1975 that trucks would be sold at private sale after time specified in May, 1975, (2) trucks were sold at time specified in such notice, but sale was public and not private, (3) creditor purchased trucks at such sale for amount equal to expenses of conducting sale, and (4) creditor, nine months later, sold trucks at private sale and sued debtor for deficiency judgment for unpaid balance due on trucks, court held (1) that first sale of trucks, which was public sale, was invalid under UCC § 9-504(3) because notice thereof did not specify time and place of sale, (2) second sale of trucks nine months later at private sale was valid because notice thereof, which had been sent to debtor in April, 1975, constituted reasonable notification under UCC § 9-504(3), provided that test of commercial reasonableness of such sale could be met, and (3) even if at trial of case it should be found that creditor had not conducted sale in commercially reasonable manner, creditor was not thereby deprived of right to deficiency judgment, since debtor under UCC § 9-507(1) could offset any loss sustained as result of creditor's failure to conduct sale in commercially reasonable manner against any deficiency judgment that creditor might obtain. Associates Fin. Servs. Co. v. DiMarco, 383 A.2d 296 (Del. Super. 1978).

Although strict compliance with the written notice provisions of UCC § 9-505(2) may not be essential where the debtor is claiming that the secured party has retained the collateral to satisfy the obligation, the creditor should in some way manifest an intent to accept the collateral in full satisfaction of such obligation. The better interpretation of UCC § 9-505(2) is that it is a provision drafted for the benefit of the secured party by allowing him the option to retain the collateral in satisfaction of the debt in certain specified situations where he manifests that intent. A debtor who has been damaged by improper retention of collateral has a remedy in UCC § 9-507(1), which allows him to recover from the secured party a loss caused by a failure to comply with any of the default provisions of Part 5 of UCC Article 9. If the loss experienced by the debtor equals the amount due under the obligation, the secured party, of course, will be entitled to no recovery. The debtor is sufficiently protected by UCC § 9-507(1) without employing a strained reading of UCC § 9-505(2) to imply retention of collateral in satisfaction of the debt where no such result was intended by the secured party. Nelson v. Armstrong, 99 Idaho 422, 582 P.2d 1100 (1978).

Secured party's failure to give debtor notice of time and place of sale of collateral, as required by UCC § 9-504(3), will not release debtor from any deficiency that may exist after the sale. In such case, however, debtor under UCC § 9-507(1) may receive credit or recover damages for any loss that he sustained as result of such failure to notify. Zions First Nat'l Bank v. Hurst, 570 P.2d 1031 (Utah 1977).

Creditor may obtain deficiency judgment despite failure to comply fully with requirement of Code § 9-504(3), and in such instances debtor's relief is limited to rights set forth in Code § 9-507(1). Lincoln Rochester Trust Co. v. Howard, 75 Misc. 2d 181 (1973).

Where finance company failed to give notice of sale of repossessed automobile as required by § 9-504(3), suit for a deficiency judgment against debtor was remanded for determination of the amount due the company, if any, after allowing the debtor the off sets provided by this section. Mallicoat v. Volunteer Fin. & Loan Corp., 57 Tenn. App. 106, 415 S.W.2d 347 (1966).

16. —Evidence and burden of proof.

Secured creditor who has liquidated his security may maintain action for deficiency judgment, but such secured creditor has burden to prove that due notice of sale as provided by law was given to debtor and that sale was commercially reasonable. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

Notwithstanding secured party's failure to notify debtor, as required by UCC § 9-504(3), of sale of collateral after debtor's default, secured party still has right to bring action for deficiency judgment, since debtor under UCC § 9-507(1) has right of action against secured party for latter's failure to proceed properly with sale of collateral. However, if secured party sells collateral without giving debtor notice required by UCC § 9-504(3), he must then prove, in his action for deficiency judgment, that reasonable value of collateral at time of sale was less than amount of debt owed by debtor. Hall v. Owen County State Bank, 175 Ind. App. 150, 370 N.E.2d 918, 7 A.L.R.4th 285 (1977).

In action by secured party to establish deficiency judgment against debtors, after default and public sale of collateral securing indebtedness, secured party was not barred from recovering deficiency by its failure to comply with notice provisions of UCC § 9-504(3), particularly where transaction was commercial dealing between experienced businessmen, and secured party's failure to give notice created, at most, rebuttable presumption that value of collateral equaled amount of debt, thus placing on secured party burden of proving that fair market value of goods sold was less than this amount. Evidence that sale was advertised and attracted numerous bidders, which permitted jury to find that sale was "commercially reasonable" and to infer that total amount received at sale was evidentiary of fair value of goods, combined with other evidence of their minimum fair value, was sufficient to support conclusion that secured party met its burden of proving by preponderance of evidence that fair value of goods at time and place of sale did not exceed net amount received from sale. United States v. Whitehouse Plastics, 501 F.2d 692 (5th Cir. Tex. 1974), cert. denied, 421 U.S. 912, 95 S. Ct. 1566, 43 L. Ed. 2d 777 (1975).

17. Commercial reasonableness.

Where, under franchising agreement between manufacturer of industrial equipment and manufacturer's franchisee, reserve account was created to aid franchisee in financing sales to customers, court held (1) that if no fiduciary relationship existed between parties, manufacturer was required to handle funds in reserve account in "commercially reasonable manner" required by UCC § 9-502(2); (2) that if fiduciary relationship did exist between parties and if other factors necessary to create constructive trust were present, manufacturer, as trustee of such trust, was required to handle trust (reserve-account funds) in "prudent and proper manner"; (3) that if manufacturer was not trustee and "commercially reasonable manner" standard applied to case, under UCC § 9-507(2), element of price-with regard to sales of repossessed equipment involved in suit-was one factor in determining commercial reasonableness of such sales, although it was not determinative factor; and (4) that whether franchisee had given manufacturer notice of defects in equipment supplied by manufacturer, as required by UCC § 2-607(3)(a), was jury question. Carter Equip. Co. v. John Deere Indus. Equip. Co., 681 F.2d 386 (5th Cir. 1982).

Although UCC § 9-507(2) provides that the fact that a better price could have been obtained at a different time or in a different method from that selected by the secured party is not, by itself, sufficient to establish that the sale was not made in a commercially reasonable manner, price is nevertheless a "term" of sale under UCC § 9-504(3). Associates Capital Servs. Corp. v. Riccardi, 454 F. Supp. 832 (D.R.I. 1978).

UCC § 9-507(1) provides that a secured party who proposes to dispose of collateral in an unreasonable manner may be restrained from doing so by court order. The statute also provides for damages where an unreasonable disposition has been effected and, in the case of an unreasonable disposition of consumer goods, prescribes a minimum recovery. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

UCC § 9-507(2) does not make every inadequacy in price, however slight, commercially unreasonable. However, a truly gross inadequacy in price, if established by the evidence and believed by the jury, will support a finding that the sale was not "in conformity with reasonable commercial practices among dealers" in the type of property sold. Allis-Chalmers Corp. v. Davis, 37 N.C. App. 114, 245 S.E.2d 566 (1978).

Although UCC § 9-507(2) states that fact that higher price could have been obtained by secured party's sale of collateral, after debtor's default, at different time or by different method from that actually employed is not in itself sufficient to establish that such sale was not made in commercially reasonable manner, nevertheless, a substantial discrepancy between sale price and reasonable value of such property, when viewed in light of all circumstances surrounding sale, is relevant to determination of whether sale was commercially reasonable, particularly where secured party itself purchased property. Kobuk Eng'g & Contracting Servs., Inc. v. Superior Tank Constr. Co.-Alaska, 568 P.2d 1007 (Alaska 1977).

UCC § 9-504 regulating sale of repossessed collateral does not require public sale on notice, but only that sale be "commercially reasonable"; even if secured party failed to comply with provisions of UCC § 9-504(3), debtor would not be discharged from all liability under contract, but would rather be entitled under UCC § 9-507(1) to recover for damages caused thereby. Stanchi v. Kemp, 48 A.D.2d 973 (3d Dep't 1975).

Under UCC, adequacy or insufficiency of price for which collateral is sold at private sale after default and repossession is one of "terms" of sale, and is relevant along with other issues, in determining whether sale was commercially reasonable. Associates Fin. Co. v. Teske, 190 Neb. 747, 212 N.W.2d 572 (1973).

Under UCC §§ 9-504(3) and 9-507(2), the adequacy or insufficiency of the price for which collateral is sold at a private sale after default and repossession is one of the "terms" of sale, and is relevant along with other issues, in determining whether the sale was commercially reasonable. First Nat'l Bank v. Rose, 188 Neb. 362, 196 N.W.2d 507 (1972).

Although a debtor is entitled to recoup any "loss" caused by failure of the secured party to comply with the UCC, the mere fact that a better price could have been obtained by sale at a different time, or different place or manner is not of itself sufficient to establish that the sale was not commercially reasonable. Fort Knox Nat'l Bank v. Gustafson, 385 S.W.2d 196 (Ky. 1964).

Where after repossession, a finance company sold an automobile for less than one-half of one recognized criterion of market price, there were equitable grounds for giving debtors right to prove that the sale was not made in a commercially reasonable manner. Family Fin. Corp. v. Scott, 24 Pa. D. & C.2d 587 (1961).

18. —Particular dispositions reasonable.

Secured creditor's foreclosure sale was conducted in commercially reasonable manner, even though subsequent sale of collateral purchased by secured creditor at foreclosure sale enabled secured creditor to receive an amount over and above price paid at foreclosure sale. In re Whatley, 126 B.R. 231 (Bankr. N.D. Miss. 1991).

In action against guarantor to recover balance due on loan, where guarantor, instead of making good on its guaranty, advised creditor to dispose of collateral over extended period of time through liquidator specially recommended by guarantor, but creditor sold collateral at public auction and net proceeds of sale were insufficient to pay off balance due on loan, guarantor could not successfully contend that because of creditor's failure to follow guarantor's recommendation for disposing of collateral, collateral was thereby unjustifiably impaired so as to discharge guarantor under UCC § 3-606(1)(b), since guarantor had waived its right to claim such discharge by consenting in its guaranty to auction sale as appropriate method for disposal of collateral. Moreover, such consent was not vitiated by creditor's alleged failure to meet its obligation under UCC § 9-504(3) to dispose of collateral in commercially reasonable manner — which obligation assertedly was not met because of creditor's failure to follow guarantor's recommendation which purportedly would have resulted in a higher price for the collateral — since UCC § 9-507(2) expressly states that fact that different method of disposition would have produced a better price does not of itself establish that sale was not made in a commercially reasonable manner. In addition, UCC § 9-507(2) also states that disposition of collateral that has been approved in any judicial proceeding shall conclusively be deemed to be commercially reasonable, and in present case sale of collateral had been approved by court in debtor's receivership proceedings, and guarantor had not attempted to restrain such sale after creditor had committed itself to an auction sale. Rhode Island Hosp. Trust Nat'l Bank v. National Health Found., 119 R.I. 823, 384 A.2d 301 (1978).

The sale of repossessed logging equipment at public auction was reasonable despite contentions that better price could have been received elsewhere and that better price could have been received if machine were disassembled and sold for parts; receipt of notice of sale by debtor was not required under UCC, only requirement being reasonable attempt of repossessor to notify, and debtor could not rely upon misstatement of place of sale in notice of sale where debtor claimed he never received notice. James Talcott, Inc. v. Reynolds, 165 Mont. 404, 529 P.2d 352 (1974).

Sale of property of bankrupt cosmetic manufacturer for purpose of liquidation was commercially reasonable where it was adequately advertised, conducted by experienced auctioneer, and 14 people registered their presence at the auction, despite fact that it resulted in $3,000 bid for property having a much higher cost value. In re Zsa Zsa, Ltd., 352 F. Supp. 665 (S.D.N.Y. 1972), aff'd, 475 F.2d 1393 (2d Cir. N.Y. 1973).

Primary focus of commercial reasonableness is not proceeds received from sale but rather procedures employed for sale; and sale intended to liquidate bankrupt cosmetic manufacturer's secured debt, which had been well advertised and was conducted by auctioneer with approximately 25 years experience, at which fourteen people registered their presence, which involved use of both bulk and lot building, and which brought bid of $300,000 for collateral that included inventory given estimated retail value of $3.5 million, wholesale value of $1.5 million, and cost value of $500,000, had benefit of judicial guidance and was valid. In re Zsa Zsa, Ltd., 352 F. Supp. 665 (S.D.N.Y. 1972), aff'd, 475 F.2d 1393 (2d Cir. N.Y. 1973).

Where bank which had advertised proposed sale of stock held as collateral and requested sealed bids therefor contracted with investment company for sale of stock prior to opening sealed bids, bank's action in rejecting plaintiff's bid, which was higher than contract price, was commercially reasonable in view of fact that plaintiff had previously indicated that $40 per share would be his top price and bank saw contract as only concrete opportunity for it to get $46 per share at time when market price of stock was $34 to $35 per share. Fenstermacher v. Philadelphia Nat'l Bank, 351 F. Supp. 1015 (E.D. Pa. 1972), aff'd, 493 F.2d 333 (3d Cir. Pa. 1974).

Sale of cattle and related farm equipment at recognized public auction in area where possession was obtained and where year-round cattle market existed was "commercially reasonable", it being expected that at such a sale the price obtained may not be as high as the price would be if a farmer were selling his own property. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

Where year-round market existed for property sold, sale at recognized public auction, with advance advertising, was "commercially reasonable", even though sale price was not as high as price would be if farmer was selling his own property. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

Code requirement that secured party act "in good faith and in commercially reasonable manner" did not require pledgee of shares of stock, acting in good faith, to exercise reasonable care to obtain best price for shares sold, provided he sold at price current in recognized market for sale of such shares; and pledgee therefore was authorized to refuse in good faith to consent to sell at time or upon terms designated by pledgor. Hutchison v. Southern Cal. First Nat'l Bank, 27 Cal. App. 3d 572, 68 A.L.R.3d 645 (4th Dist. 1972).

By approval of transfer of stock and by entry of summary judgment in receivership proceeding, trial court determined that disposition of stock was commercially reasonable as matter of law. Frontier Inv. Corp. v. Belleville Nat'l Sav. Bank, 119 Ill. App. 2d 2, 254 N.E.2d 295 (5th Dist. 1969).

19. —Particular dispositions not reasonable.

UCC § 9-507(1) provides that a secured party who proposes to dispose of collateral in an unreasonable manner may be restrained from doing so by court order. The statute also provides for damages where an unreasonable disposition has been effected and, in the case of an unreasonable disposition of consumer goods, prescribes a minimum recovery. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

UCC § 9-507(1) does not entitle a debtor, simply because the collateral is consumer goods, to at least a minimum recovery where the creditor gives notice of a proposed disposition of collateral that is commercially unreasonable but then fails to dispose of it. The statute is not intended to punish a creditor and recompense a debtor unless the debtor has been injured. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

In action by federal Small Business Administration for deficiency judgment on note following sale of collateral which was security for note, allowance of debtor's counterclaim for damages under UCC § 9-507(1) for creditor's noncompliance with UCC § 9-504(3) by selling collateral in commercially unreasonable manner would be sustained where evidence sufficiently showed, among other things, that sale had been inadequately advertised and that collateral had been sold for $20,000, even though creditor had assessed its value at nearly $90,000 six months before the sale. In such case, moreover, since remedy provided in UCC § 9-507(1) for creditor's noncompliance with UCC § 9-504(3) precluded debtor from setting up bar to deficiency judgment for creditor, deficiency judgment obtained by creditor would also be sustained. Barbour v. United States, 562 F.2d 19 (10th Cir. Kan. 1977).

In action by buyer for damages for wrongful sale of repossessed automobile against dealer who resold vehicle and bank which had security interest therein, where buyer requested bank employee, while employee was repossessing vehicle on June 9, 1975, to hold vehicle for ten days to allow buyer to redeem it, and employee agreed to such request and orally informed dealer of buyer's intention to redeem; where bank on June 9, 1975, notified buyer by letter that efforts to resell vehicle would commence on June 19, 1975, and would continue until it was resold; where such letter also notified buyer of his right to redeem vehicle before its resale, but did not indicate where resale would take place; and where buyer received such letter on June 14, 1975, which was date on which dealer resold vehicle to third person, (1) bank as secured party at time of default, repossession, and resale violated its duty under UCC § 9-504(3) to give buyer reasonable notice of time and place of such resale and thus could have been found by jury to be liable under UCC § 9-507(1) for not effecting "commercially reasonable" disposition of vehicle under UCC § 9-504(3); (2) bank also could have been found liable for violation of UCC § 9-506 for not permitting buyer to redeem vehicle; and (3) jury could further have found that connection existed between bank and dealer in their prior course of dealing and their conduct in present transaction which demonstrated community of action and interest that would render both liable to buyer, particularly in view of evidence sufficient to show that bank had adopted dealer's actions by accepting dealer's check, based on proceeds of resale, for full payment of balance owed by buyer on vehicle. Wells v. Central Bank, 347 So. 2d 114 (Ala. Civ. App. 1977).

Where no notice of time, date, place and manner of sale was ever given to debtor by secured party as is normally required under UCC § 9-504(1) and (3), secured party was not entitled to deficiency judgment or attorney's fees and debtor was entitled to damages pursuant to UCC § 9-507. Chrysler Credit Corp. v. Burns, 562 P.2d 233 (Utah 1977).

Where owner of automobile, which was repossessed after default on installment contract, did not receive notice of place of public sale and where, although automobile was in good condition, proceeds obtained less than six months after initial purchase were only about 55% of the amount originally financed, creditor could not recover deficiency judgment in absence of showing that the method, manner, time, place and terms of sale were in fact commercially reasonable. Marine Midland Bank-Central v. Watkins, 89 Misc. 2d 949 (1977).

Creditor's default sale of tractor was not commercially reasonable as required by UCC § 9-504(3) where debtors had no notice other than posting of notice of sale at courthouse and where there was no evidence that tractor was sold in any recognized market for used tractors, that it was sold at price current on any such market, or that it was sold in conformity with reasonable commercial practices among tractor dealers; however, creditor was not absolutely barred from recovering deficiency judgment against debtor in any amount; rather debt was to be credited with amount that reasonably should have been obtained through sale conducted in reasonably commercial manner according to UCC and creditor's failure to dispose of collateral as required by Code raised presumption that collateral was worth at least amount of debt, which placed upon creditor burden of overcoming such presumption by proving market value of collateral by evidence other than resale price. Hodges v. Norton, 29 N.C. App. 193, 223 S.E.2d 848 (1976).

It was necessary for seller of automobile to establish that every aspect of sale of automobile after buyer's default was commercially reasonable, including adequacy of price for which automobile was sold; and private sale by seller which took place by means of inter-office exchange of papers with automobile sold back into seller's inventory at appraised "wholesale" value was as matter of law commercially unreasonable. Vic Hansen & Sons v. Crowley, 57 Wis. 2d 106, 203 N.W.2d 728, 59 A.L.R.3d 360 (1973).

Plaintiff did not sell aircraft in commercially reasonable manner, where he did not advertise or otherwise make reasonable contacts within the industry to dispose of the aircraft, but rather took the quick and easy way out by selling the aircraft to the same people who had been using it. Dynalectron Corp. v. Jack Richards Aircraft Co., 337 F. Supp. 659 (W.D. Okla. 1972).

20. —Judicially-approved dispositions.

Where several debtors pledged shares of stock as collateral for loan and, after loan was in default, one debtor filed petition for bankruptcy, where bankruptcy court approved sale of bankrupt debtor's shares subject to condition that entire block of shares, including those pledged by other debtors, would be sold as unit, and where secured party thereupon conducted sale and sold entire block, sale was judicially-approved disposition and was entitled to conclusive presumption of reasonableness under UCC § 9-507(2) even though court did not have jurisdiction over other debtors' collateral since other debtors actively participated in proceedings leading to approval of sale of bankrupt's shares in conjunction with sale of entire unit and since they had requisite opportunity to object to terms of sale. Bryant v. American Nat'l Bank & Trust Co., 407 F. Supp. 360 (N.D. Ill. 1976).

21. —Evidence and burden of proof.

In action brought by secured creditor against maker and guarantor of note to recover deficiency alleged to be due on note after secured creditor sold collateral, summary judgment in favor of secured creditor was precluded by existence of factual issues concerning propriety of notice of sale and whether sale was conducted in commercially reasonable manner. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

In action for deficiency judgment following repossession and sale of mobile home, wherein defense was lack of notice as to sale and commercial unreasonableness of sale and defendant counterclaimed for assessment of penalty against plaintiff for noncompliance with Uniform Commercial Code, court erred in striking defendant's interrogatories seeking information concerning sale and inquiring into existence of any relationship that might give reason to question propriety of sale and its commercial reasonableness, but court did not abuse its discretion in striking interrogatories seeking information either irrelevant or previously requested in other interrogatories. Lincoln First Bank v. Rhoades, 59 A.D.2d 1046 (4th Dep't 1977).

In action by creditor to collect on promissory note, to enforce agreement securing it, and to enforce agreement guaranteeing payment of note, contention of guarantors that testimony showed that price paid by buyer at creditor's sale of collateral was inadequate and thus raised issue of fact as to whether sale was made in commercially reasonable manner could not be sustained under UCC § 9-507(2) where guarantors offered no testimony that sale was commercially unreasonable for any other reason. First Union Nat'l Bank v. Tectamar, Inc., 33 N.C. App. 604, 235 S.E.2d 894 (1977).

It was necessary for seller of automobile to establish that every aspect of sale of automobile after buyer's default was commercially reasonable, including adequacy of price for which automobile was sold. Vic Hansen & Sons v. Crowley, 57 Wis. 2d 106, 203 N.W.2d 728, 59 A.L.R.3d 360 (1973).

Evidence of inadequacy of price for which collateral is sold at private sale after default and repossession is relevant in determining whether sale was commercially reasonable, and was admissible under a general denial in an action to recover a deficiency judgment for the balance due on a secured note after a sale of the collateral security. First Nat'l Bank v. Rose, 188 Neb. 362, 196 N.W.2d 507 (1972).

Although Code does not compel sale of secured aircraft at highest possible price, sale must be conducted in commercially reasonable manner; where, prior to repossession, buyer had substantially improved aircraft which he had originally purchased for $100,000, resale less than one year after original purchase for $31,000, raised genuine issue of material fact relating to commercial reasonableness of sale precluding disposition by summary judgment. California Airmotive Corp. v. Jones, 24 Ohio Misc. 255, 415 F.2d 554 (6th Cir. Ohio 1969).

RESEARCH REFERENCES

ALR. Rights in proceeds of vehicle collision policy, under "loss-payable" clause, of conditional seller, chattel mortgagee, or the like, of vehicle where there has been improper repossession or foreclosure after the damage. 46 A.L.R.2d 992.

Effect of default by conditional seller in the resale of repossessed property. 49 A.L.R.2d 77.

Uniform Commercial Code: Burden of proof as to commercially reasonable disposition of collateral. 59 A.L.R.3d 369.

Uniform Commercial Code: Failure of secured creditor to give required notice of disposition of collateral as bar to deficiency judgment. 59 A.L.R.3d 401.

UCC: value of trade-in taken on sale of collateral for purposes of computing surplus or deficiency. 72 A.L.R.4th 1128.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 652 et seq.

Rights and remedies of debtor; recovery from secured party for noncompliance, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:811-9:821.

4 Am. Jur. Proof of Facts 2d, Secured Party's Failure to Sell Collateral in Commercially Reasonable Manner, § 12 et seq. (proof that secured party's sale of repossessed collateral was not commercially reasonable).

CJS. 79 C.J.S., Secured Transactions § 185.

72 C.J.S., Pledges §§ 58, 59 et seq.

§ 75-9-626. Action in which deficiency or surplus is in issue.

In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance

unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in Section 75-9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under Section 75-9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-627. Determination of whether conduct was commercially reasonable.

(a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;
(2) By a bona fide creditors' committee;
(3) By a representative of creditors; or
(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

SOURCES: Derived from former 1972 Code § 75-9-507 [Codes, 1942, § 41A:9-507; Laws, 1966, ch. 316, § 9-507, eff March 31, 1968] and enacted by Laws, 2001, ch. 495, § 1, eff from and after January 1, 2002.

Cross References — Injunctions, generally, see § 11-13-1 et seq.
Obligation of good faith, see § 75-1-203.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former § 75-9-507(2).
6. Commercial reasonableness.
7. —Particular dispositions reasonable.
8. —Particular dispositions not reasonable.
9. —Judicially-approved dispositions.
10. —Evidence and burden of proof.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former § 75-9-507(2).

6. Commercial reasonableness.

Where, under franchising agreement between manufacturer of industrial equipment and manufacturer's franchisee, reserve account was created to aid franchisee in financing sales to customers, court held (1) that if no fiduciary relationship existed between parties, manufacturer was required to handle funds in reserve account in "commercially reasonable manner" required by UCC § 9-502(2); (2) that if fiduciary relationship did exist between parties and if other factors necessary to create constructive trust were present, manufacturer, as trustee of such trust, was required to handle trust (reserve-account funds) in "prudent and proper manner"; (3) that if manufacturer was not trustee and "commercially reasonable manner" standard applied to case, under UCC § 9-507(2), element of price-with regard to sales of repossessed equipment involved in suit-was one factor in determining commercial reasonableness of such sales, although it was not determinative factor; and (4) that whether franchisee had given manufacturer notice of defects in equipment supplied by manufacturer, as required by UCC § 2-607(3)(a), was jury question. Carter Equip. Co. v. John Deere Indus. Equip. Co., 681 F.2d 386 (5th Cir. 1982).

UCC § 9-507(1) provides that a secured party who proposes to dispose of collateral in an unreasonable manner may be restrained from doing so by court order. The statute also provides for damages where an unreasonable disposition has been effected and, in the case of an unreasonable disposition of consumer goods, prescribes a minimum recovery. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

Although UCC § 9-507(2) provides that the fact that a better price could have been obtained at a different time or in a different method from that selected by the secured party is not, by itself, sufficient to establish that the sale was not made in a commercially reasonable manner, price is nevertheless a "term" of sale under UCC § 9-504(3). Associates Capital Servs. Corp. v. Riccardi, 454 F. Supp. 832 (D.R.I. 1978).

UCC § 9-507(2) does not make every inadequacy in price, however slight, commercially unreasonable. However, a truly gross inadequacy in price, if established by the evidence and believed by the jury, will support a finding that the sale was not "in conformity with reasonable commercial practices among dealers" in the type of property sold. Allis-Chalmers Corp. v. Davis, 37 N.C. App. 114, 245 S.E.2d 566 (1978).

Although UCC § 9-507(2) states that fact that higher price could have been obtained by secured party's sale of collateral, after debtor's default, at different time or by different method from that actually employed is not in itself sufficient to establish that such sale was not made in commercially reasonable manner, nevertheless, a substantial discrepancy between sale price and reasonable value of such property, when viewed in light of all circumstances surrounding sale, is relevant to determination of whether sale was commercially reasonable, particularly where secured party itself purchased property. Kobuk Eng'g & Contracting Servs., Inc. v. Superior Tank Constr. Co.-Alaska, 568 P.2d 1007 (Alaska 1977).

UCC § 9-504 regulating sale of repossessed collateral does not require public sale on notice, but only that sale be "commercially reasonable"; even if secured party failed to comply with provisions of UCC § 9-504(3), debtor would not be discharged from all liability under contract, but would rather be entitled under UCC § 9-507(1) to recover for damages caused thereby. Stanchi v. Kemp, 48 A.D.2d 973 (3d Dep't 1975).

Under UCC, adequacy or insufficiency of price for which collateral is sold at private sale after default and repossession is one of "terms" of sale, and is relevant along with other issues, in determining whether sale was commercially reasonable. Associates Fin. Co. v. Teske, 190 Neb. 747, 212 N.W.2d 572 (1973).

Under UCC §§ 9-504(3) and 9-507(2), the adequacy or insufficiency of the price for which collateral is sold at a private sale after default and repossession is one of the "terms" of sale, and is relevant along with other issues, in determining whether the sale was commercially reasonable. First Nat'l Bank v. Rose, 188 Neb. 362, 196 N.W.2d 507 (1972).

Although a debtor is entitled to recoup any "loss" caused by failure of the secured party to comply with the UCC, the mere fact that a better price could have been obtained by sale at a different time, or different place or manner is not of itself sufficient to establish that the sale was not commercially reasonable. Fort Knox Nat'l Bank v. Gustafson, 385 S.W.2d 196 (Ky. 1964).

Where after repossession, a finance company sold an automobile for less than one-half of one recognized criterion of market price, there were equitable grounds for giving debtors right to prove that the sale was not made in a commercially reasonable manner. Family Fin. Corp. v. Scott, 24 Pa. D. & C.2d 587 (1961).

7. —Particular dispositions reasonable.

Secured creditor's foreclosure sale was conducted in commercially reasonable manner, even though subsequent sale of collateral purchased by secured creditor at foreclosure sale enabled secured creditor to receive an amount over and above price paid at foreclosure sale. In re Whatley, 126 B.R. 231 (Bankr. N.D. Miss. 1991).

In action against guarantor to recover balance due on loan, where guarantor, instead of making good on its guaranty, advised creditor to dispose of collateral over extended period of time through liquidator specially recommended by guarantor, but creditor sold collateral at public auction and net proceeds of sale were insufficient to pay off balance due on loan, guarantor could not successfully contend that because of creditor's failure to follow guarantor's recommendation for disposing of collateral, collateral was thereby unjustifiably impaired so as to discharge guarantor under UCC § 3-606(1)(b), since guarantor had waived its right to claim such discharge by consenting in its guaranty to auction sale as appropriate method for disposal of collateral. Moreover, such consent was not vitiated by creditor's alleged failure to meet its obligation under UCC § 9-504(3) to dispose of collateral in commercially reasonable manner — which obligation assertedly was not met because of creditor's failure to follow guarantor's recommendation which purportedly would have resulted in a higher price for the collateral — since UCC § 9-507(2) expressly states that fact that different method of disposition would have produced a better price does not of itself establish that sale was not made in a commercially reasonable manner. In addition, UCC § 9-507(2) also states that disposition of collateral that has been approved in any judicial proceeding shall conclusively be deemed to be commercially reasonable, and in present case sale of collateral had been approved by court in debtor's receivership proceedings, and guarantor had not attempted to restrain such sale after creditor had committed itself to an auction sale. Rhode Island Hosp. Trust Nat'l Bank v. National Health Found., 119 R.I. 823, 384 A.2d 301 (1978).

The sale of repossessed logging equipment at public auction was reasonable despite contentions that better price could have been received elsewhere and that better price could have been received if machine were disassembled and sold for parts; receipt of notice of sale by debtor was not required under UCC, only requirement being reasonable attempt of repossessor to notify, and debtor could not rely upon misstatement of place of sale in notice of sale where debtor claimed he never received notice. James Talcott, Inc. v. Reynolds, 165 Mont. 404, 529 P.2d 352 (1974).

Sale of property of bankrupt cosmetic manufacturer for purpose of liquidation was commercially reasonable where it was adequately advertised, conducted by experienced auctioneer, and 14 people registered their presence at the auction, despite fact that it resulted in $3,000 bid for property having a much higher cost value. In re Zsa Zsa, Ltd., 352 F. Supp. 665 (S.D.N.Y. 1972), aff'd, 475 F.2d 1393 (2d Cir. N.Y. 1973).

Primary focus of commercial reasonableness is not proceeds received from sale but rather procedures employed for sale; and sale intended to liquidate bankrupt cosmetic manufacturer's secured debt, which had been well advertised and was conducted by auctioneer with approximately 25 years experience, at which fourteen people registered their presence, which involved use of both bulk and lot building, and which brought bid of $300,000 for collateral that included inventory given estimated retail value of $3.5 million, wholesale value of $1.5 million, and cost value of $500,000, had benefit of judicial guidance and was valid. In re Zsa Zsa, Ltd., 352 F. Supp. 665 (S.D.N.Y. 1972), aff'd, 475 F.2d 1393 (2d Cir. N.Y. 1973).

Where bank which had advertised proposed sale of stock held as collateral and requested sealed bids therefor contracted with investment company for sale of stock prior to opening sealed bids, bank's action in rejecting plaintiff's bid, which was higher than contract price, was commercially reasonable in view of fact that plaintiff had previously indicated that $40 per share would be his top price and bank saw contract as only concrete opportunity for it to get $46 per share at time when market price of stock was $34 to $35 per share. Fenstermacher v. Philadelphia Nat'l Bank, 351 F. Supp. 1015 (E.D. Pa. 1972), aff'd, 493 F.2d 333 (3d Cir. Pa. 1974).

Sale of cattle and related farm equipment at recognized public auction in area where possession was obtained and where year-round cattle market existed was "commercially reasonable", it being expected that at such a sale the price obtained may not be as high as the price would be if a farmer were selling his own property. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

Where year-round market existed for property sold, sale at recognized public auction, with advance advertising, was "commercially reasonable", even though sale price was not as high as price would be if farmer was selling his own property. United States v. Pirnie, 339 F. Supp. 702 (D. Neb. 1972), aff'd, 472 F.2d 712 (8th Cir. Neb. 1973).

Code requirement that secured party act "in good faith and in commercially reasonable manner" did not require pledgee of shares of stock, acting in good faith, to exercise reasonable care to obtain best price for shares sold, provided he sold at price current in recognized market for sale of such shares; and pledgee therefore was authorized to refuse in good faith to consent to sell at time or upon terms designated by pledgor. Hutchison v. Southern Cal. First Nat'l Bank, 27 Cal. App. 3d 572, 68 A.L.R.3d 645 (4th Dist. 1972).

By approval of transfer of stock and by entry of summary judgment in receivership proceeding, trial court determined that disposition of stock was commercially reasonable as matter of law. Frontier Inv. Corp. v. Belleville Nat'l Sav. Bank, 119 Ill. App. 2d 2, 254 N.E.2d 295 (5th Dist. 1969).

8. —Particular dispositions not reasonable.

UCC § 9-507(1) provides that a secured party who proposes to dispose of collateral in an unreasonable manner may be restrained from doing so by court order. The statute also provides for damages where an unreasonable disposition has been effected and, in the case of an unreasonable disposition of consumer goods, prescribes a minimum recovery. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

UCC § 9-507(1) does not entitle a debtor, simply because the collateral is consumer goods, to at least a minimum recovery where the creditor gives notice of a proposed disposition of collateral that is commercially unreasonable but then fails to dispose of it. The statute is not intended to punish a creditor and recompense a debtor unless the debtor has been injured. Gray-Taylor, Inc. v. Tennessee, 573 S.W.2d 859 (Tex. Civ. App. 1978), writ granted, 22 Tex. Sup. Ct. J. 380 (Tex. 1979), rev'd, 587 S.W.2d 668 (Tex. 1979).

In action by federal Small Business Administration for deficiency judgment on note following sale of collateral which was security for note, allowance of debtor's counterclaim for damages under UCC § 9-507(1) for creditor's noncompliance with UCC § 9-504(3) by selling collateral in commercially unreasonable manner would be sustained where evidence sufficiently showed, among other things, that sale had been inadequately advertised and that collateral had been sold for $20,000, even though creditor had assessed its value at nearly $90,000 six months before the sale. In such case, moreover, since remedy provided in UCC § 9-507(1) for creditor's noncompliance with UCC § 9-504(3) precluded debtor from setting up bar to deficiency judgment for creditor, deficiency judgment obtained by creditor would also be sustained. Barbour v. United States, 562 F.2d 19 (10th Cir. Kan. 1977).

In action by buyer for damages for wrongful sale of repossessed automobile against dealer who resold vehicle and bank which had security interest therein, where buyer requested bank employee, while employee was repossessing vehicle on June 9, 1975, to hold vehicle for ten days to allow buyer to redeem it, and employee agreed to such request and orally informed dealer of buyer's intention to redeem; where bank on June 9, 1975, notified buyer by letter that efforts to resell vehicle would commence on June 19, 1975, and would continue until it was resold; where such letter also notified buyer of his right to redeem vehicle before its resale, but did not indicate where resale would take place; and where buyer received such letter on June 14, 1975, which was date on which dealer resold vehicle to third person, (1) bank as secured party at time of default, repossession, and resale violated its duty under UCC § 9-504(3) to give buyer reasonable notice of time and place of such resale and thus could have been found by jury to be liable under UCC § 9-507(1) for not effecting "commercially reasonable" disposition of vehicle under UCC § 9-504(3); (2) bank also could have been found liable for violation of UCC § 9-506 for not permitting buyer to redeem vehicle; and (3) jury could further have found that connection existed between bank and dealer in their prior course of dealing and their conduct in present transaction which demonstrated community of action and interest that would render both liable to buyer, particularly in view of evidence sufficient to show that bank had adopted dealer's actions by accepting dealer's check, based on proceeds of resale, for full payment of balance owed by buyer on vehicle. Wells v. Central Bank, 347 So. 2d 114 (Ala. Civ. App. 1977).

Where no notice of time, date, place and manner of sale was ever given to debtor by secured party as is normally required under UCC § 9-504(1) and (3), secured party was not entitled to deficiency judgment or attorney's fees and debtor was entitled to damages pursuant to UCC § 9-507. Chrysler Credit Corp. v. Burns, 562 P.2d 233 (Utah 1977).

Where owner of automobile, which was repossessed after default on installment contract, did not receive notice of place of public sale and where, although automobile was in good condition, proceeds obtained less than six months after initial purchase were only about 55% of the amount originally financed, creditor could not recover deficiency judgment in absence of showing that the method, manner, time, place and terms of sale were in fact commercially reasonable. Marine Midland Bank-Central v. Watkins, 89 Misc. 2d 949 (1977).

Creditor's default sale of tractor was not commercially reasonable as required by UCC § 9-504(3) where debtors had no notice other than posting of notice of sale at courthouse and where there was no evidence that tractor was sold in any recognized market for used tractors, that it was sold at price current on any such market, or that it was sold in conformity with reasonable commercial practices among tractor dealers; however, creditor was not absolutely barred from recovering deficiency judgment against debtor in any amount; rather debt was to be credited with amount that reasonably should have been obtained through sale conducted in reasonably commercial manner according to UCC and creditor's failure to dispose of collateral as required by Code raised presumption that collateral was worth at least amount of debt, which placed upon creditor burden of overcoming such presumption by proving market value of collateral by evidence other than resale price. Hodges v. Norton, 29 N.C. App. 193, 223 S.E.2d 848 (1976).

It was necessary for seller of automobile to establish that every aspect of sale of automobile after buyer's default was commercially reasonable, including adequacy of price for which automobile was sold; and private sale by seller which took place by means of inter-office exchange of papers with automobile sold back into seller's inventory at appraised "wholesale" value was as matter of law commercially unreasonable. Vic Hansen & Sons v. Crowley, 57 Wis. 2d 106, 203 N.W.2d 728, 59 A.L.R.3d 360 (1973).

Plaintiff did not sell aircraft in commercially reasonable manner, where he did not advertise or otherwise make reasonable contacts within the industry to dispose of the aircraft, but rather took the quick and easy way out by selling the aircraft to the same people who had been using it. Dynalectron Corp. v. Jack Richards Aircraft Co., 337 F. Supp. 659 (W.D. Okla. 1972).

9. —Judicially-approved dispositions.

Where several debtors pledged shares of stock as collateral for loan and, after loan was in default, one debtor filed petition for bankruptcy, where bankruptcy court approved sale of bankrupt debtor's shares subject to condition that entire block of shares, including those pledged by other debtors, would be sold as unit, and where secured party thereupon conducted sale and sold entire block, sale was judicially-approved disposition and was entitled to conclusive presumption of reasonableness under UCC § 9-507(2) even though court did not have jurisdiction over other debtors' collateral since other debtors actively participated in proceedings leading to approval of sale of bankrupt's shares in conjunction with sale of entire unit and since they had requisite opportunity to object to terms of sale. Bryant v. American Nat'l Bank & Trust Co., 407 F. Supp. 360 (N.D. Ill. 1976).

10. —Evidence and burden of proof.

In action brought by secured creditor against maker and guarantor of note to recover deficiency alleged to be due on note after secured creditor sold collateral, summary judgment in favor of secured creditor was precluded by existence of factual issues concerning propriety of notice of sale and whether sale was conducted in commercially reasonable manner. Security Trust Co. v. Thomas, 59 A.D.2d 242 (4th Dep't 1977).

In action for deficiency judgment following repossession and sale of mobile home, wherein defense was lack of notice as to sale and commercial unreasonableness of sale and defendant counterclaimed for assessment of penalty against plaintiff for noncompliance with Uniform Commercial Code, court erred in striking defendant's interrogatories seeking information concerning sale and inquiring into existence of any relationship that might give reason to question propriety of sale and its commercial reasonableness, but court did not abuse its discretion in striking interrogatories seeking information either irrelevant or previously requested in other interrogatories. Lincoln First Bank v. Rhoades, 59 A.D.2d 1046 (4th Dep't 1977).

In action by creditor to collect on promissory note, to enforce agreement securing it, and to enforce agreement guaranteeing payment of note, contention of guarantors that testimony showed that price paid by buyer at creditor's sale of collateral was inadequate and thus raised issue of fact as to whether sale was made in commercially reasonable manner could not be sustained under UCC § 9-507(2) where guarantors offered no testimony that sale was commercially unreasonable for any other reason. First Union Nat'l Bank v. Tectamar, Inc., 33 N.C. App. 604, 235 S.E.2d 894 (1977).

It was necessary for seller of automobile to establish that every aspect of sale of automobile after buyer's default was commercially reasonable, including adequacy of price for which automobile was sold. Vic Hansen & Sons v. Crowley, 57 Wis. 2d 106, 203 N.W.2d 728, 59 A.L.R.3d 360 (1973).

Evidence of inadequacy of price for which collateral is sold at private sale after default and repossession is relevant in determining whether sale was commercially reasonable, and was admissible under a general denial in an action to recover a deficiency judgment for the balance due on a secured note after a sale of the collateral security. First Nat'l Bank v. Rose, 188 Neb. 362, 196 N.W.2d 507 (1972).

Although Code does not compel sale of secured aircraft at highest possible price, sale must be conducted in commercially reasonable manner; where, prior to repossession, buyer had substantially improved aircraft which he had originally purchased for $100,000, resale less than one year after original purchase for $31,000, raised genuine issue of material fact relating to commercial reasonableness of sale precluding disposition by summary judgment. California Airmotive Corp. v. Jones, 24 Ohio Misc. 255, 415 F.2d 554 (6th Cir. Ohio 1969).

RESEARCH REFERENCES

ALR. Rights in proceeds of vehicle collision policy, under "loss-payable" clause, of conditional seller, chattel mortgagee, or the like, of vehicle where there has been improper repossession or foreclosure after the damage. 46 A.L.R.2d 992.

Effect of default by conditional seller in the resale of repossessed property. 49 A.L.R.2d 77.

Uniform Commercial Code: Burden of proof as to commercially reasonable disposition of collateral. 59 A.L.R.3d 369.

Uniform Commercial Code: Failure of secured creditor to give required notice of disposition of collateral as bar to deficiency judgment. 59 A.L.R.3d 401.

UCC: value of trade-in taken on sale of collateral for purposes of computing surplus or deficiency. 72 A.L.R.4th 1128.

Am Jur. 68A Am. Jur. 2d, Secured Transactions § 652 et seq.

Rights and remedies of debtor; recovery from secured party for noncompliance, 6 Am. Jur. Pl & Pr Forms (Rev), Secured Transactions, Forms 9:811-9:821.

4 Am. Jur. Proof of Facts 2d, Secured Party's Failure to Sell Collateral in Commercially Reasonable Manner, § 12 et seq. (proof that secured party's sale of repossessed collateral was not commercially reasonable).

CJS. 79 C.J.S., Secured Transactions § 185.

72 C.J.S., Pledges §§ 58, 59 et seq.

§ 75-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

(a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under Section 75-9-625(c)(2) for its failure to comply with Section 75-9-616.

(e) A secured party is not liable under Section 75-9-625(c)(2) more than once with respect to any one (1) secured obligation.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

PART 7.

TRANSITION.

SEC.
75-9-701. Definitions.
75-9-702. Savings clause.
75-9-703. Security interest perfected before effective date.
75-9-704. Security interest unperfected before effective date.
75-9-705. Effectiveness of action taken before effective date.
75-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

75-9-707. Amendment of pre-effective-date financing statement.
75-9-708. Persons entitled to file initial financing statement or continuation statement.
75-9-709. Priority.
75-9-710. Special transitional provisions for maintaining and searching local records.

Editor's Note — Many of the notes found under this section originated with the prior version of Chapter 9 which was revised in 2001. They have been moved to their current location at the direction of Codification Counsel. Some of the sections of the Uniform Commercial Code referenced in case notes under 'Judicial Decisions' were current when the cases were decided but may have been revised or repealed since then. Cases decided under former law are clearly identified.

§ 75-9-701. Definitions.

(1) References in Part 7 to "this act" refer to the legislative enactment by which this part is added to Article 9 of the Uniform Commercial Code.

(2) References in this part to "former Article 9" are to Article 9 found in Chapter 9 of Title 75 as in effect on December 31, 2001.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2002, ch. 453, § 1, eff from and after Jan. 1, 2002.

§ 75-9-702. Savings clause.

(a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before January 1, 2002.

(b) Except as otherwise provided in subsection (c) and Sections 75-9-703 through 75-9-709:

(1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before January 1, 2002, and would be subject to this act if they had been entered into or created after this act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after January 1, 2002; and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) This act does not affect an action, case, or proceeding commenced before January 1, 2002.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-703. Security interest perfected before effective date.

(a) A security interest that is enforceable immediately before January 1, 2002 and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, on

January 1, 2002, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Except as otherwise provided in Section 75-9-705, if, immediately January 1, 2002, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied on January 1, 2002, the security interest:

(1) Is a perfected security interest for one (1) year after January 1, 2002;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under Section 75-9-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this act are satisfied before the year expires.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-704. Security interest unperfected before effective date.

A security interest that is enforceable immediately before January 1, 2002 but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one (1) year after January 1, 2002;

(2) Remains enforceable thereafter if the security interest becomes enforceable under Section 75-9-203 on January 1, 2002 or within one (1) year thereafter; and

(3) Becomes perfected:

(A) Without further action, on January 1, 2002 if the applicable requirements for perfection under this act are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-705. Effectiveness of action taken before effective date.

(a) If action, other than the filing of a financing statement, is taken before January 1, 2002 and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before January 1, 2002, the action is effective to perfect a security interest that attaches under this act within one (1) year after January 1, 2002. An attached security interest becomes unperfected one (1) year after January 1, 2002 unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) This act does not render ineffective an effective financing statement that, before January 1, 2002, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 75-9-103. However, except as otherwise provided in subsections (d) and (e) and Section 75-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) December 31, 2006.

Provided, however, a financing statement filed before January 1, 2002, covering a manufactured home, other than a manufactured home constituting inventory, remains effective, if it so states, until a termination statement is filed.

(d) The filing of a continuation statement after January 1, 2002 does not continue the effectiveness of the financing statement filed before January 1, 2002. However, upon the timely filing of a continuation statement after January 1, 2002 and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before January 1, 2002 continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that, before January 1, 2002, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 75-9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before January 1, 2002 and a continuation statement filed after January 1, 2002 is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2002, ch. 453, § 2, eff from and after Jan. 1, 2002.

§ 75-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

(a) The filing of an initial financing statement in the office specified in Section 75-9-501 continues the effectiveness of a financing statement filed before January 1, 2002 if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) The pre-effective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before January 1, 2002, for the period provided in former Section 75-9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after January 1, 2002, for the period provided in Section 75-9-515 with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of Part 5 for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-707. Amendment of pre-effective-date financing statement.

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before January 1, 2002.

(b) After January 1, 2002, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after January 1, 2002 only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in Section 75-9-501;

(2) An amendment is filed in the office specified in Section 75-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 75-9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies Section 75-9-706(c) is filed in the office specified in Section 75-9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 75-9-705(d) and (f) or 75-9-706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after January 1, 2002 by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 75-9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (b). The number "3" was added following "Part" at the end of the first sentence and the subsection number "(3)" was deleted preceding "However" at the beginning of the second sentence so that"... as provided in Part. (3) However, the effectiveness ..." now reads "... as provided in Part 3. However, the effectiveness." The Joint Committee ratified the correction at its August 5, 2008, meeting.

ATTORNEY GENERAL OPINIONS

Under Revised Article 9, the intent of the Legislature was to limit the UCC filings in the chancery clerk's office to only those filings related to real estate fixtures, timber to be cut and as-extracted collateral (minerals) or termination of pre-effective date financing statements; thus, termination statements on filings of financing statements made before January 1, 2002 should be filed with the appropriate chancery clerk's office, but the filing of other UCC 3s-assignments, continuations, amendments, releases and other filings related to instruments on file in the clerk's office is prohibited, unless those instruments involve the real estate related filings described in § 75-9-501. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

§ 75-9-708. Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before January 1, 2002; or

(B) To perfect or continue the perfection of a security interest.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-709. Priority.

(a) This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before January 1, 2002, former Article 9 determines priority.

(b) For purposes of Section 75-9-322(a), the priority of a security interest that becomes enforceable under Section 75-9-203 of this act dates from January 1, 2002 if the security interest is perfected under this act by the filing of a financing statement before January 1, 2002 which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

§ 75-9-710. Special transitional provisions for maintaining and searching local records.

(a) In this section:

(1) "Local-filing office" means a filing office, other than the statewide central filing office identified in Section 75-9-401(1) of former Chapter 9, that is designated as the proper place to file a financing statement under Section 75-9-401(1) of former Chapter 9. The term applies only with respect to a record that covers a type of collateral as to which the filing office is designated in that section as the proper place to file.

(2) "Former-Chapter-9 records" means:

(A) Financing statements and other records that have been filed in a local-filing office before January 1, 2002, and that are, or upon processing and indexing will be, reflected in the index maintained, as of December 31, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before January 1, 2002, and

(B) The index as of December 31, 2001.

The term does not include records presented to a local-filing office for filing after December 31, 2001, whether or not the records relate to financing statements filed in the local-filing office before January 1, 2002.

(3) "Mortgage," "as-extracted collateral," "fixture filing," "goods" and "fixtures" have the meanings set forth in Revised Article 9 for those terms.

(b) Except as expressly provided in Part 5 of Chapter 9 as effective on and after January 1, 2002, a local-filing office must not accept for filing a record presented after December 31, 2001, whether or not the record relates to a financing statement filed in the local-filing office before January 1, 2002, other than a termination statement filed in accordance with Section 75-9-707.

(c) Until January 1, 2009, each local-filing office must maintain all former-Chapter-9 records in accordance with former Chapter 9. A former-Chapter-9 record that is not reflected on the index maintained at December 31, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of December 31, 2001, as soon as practicable but in any event no later than January 31, 2002.

(d) Until at least December 31, 2008, each local-filing office must respond to requests for information with respect to former-Chapter-9 records relating to a debtor and issue certificates in accordance with former Chapter 9.

(1) Upon request in writing of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any presently effective financing statements naming a particular debtor thereof, and if there is, giving the date and hour of filing and file number of each such financing statement and the name and address of each secured party or his assignee therein. Each such request shall be accompanied by a search fee of Five Dollars ($5.00) if the request is made on the standard form prescribed by the Secretary of State, and otherwise it shall be Ten Dollars ($10.00). An additional fee of Two Dollars ($2.00) shall be paid by the requesting party for each financing statement listed on the filing officer's certificate, the aggregate of which shall be billed to the requesting party at the time the filing officer's certificate is issued. Failure to pay the additional fee by any requesting party when due may result in denial of further service to the requesting party until the amount due has been paid.

(2) Upon request, the filing officer shall furnish a copy of any presently effective financing statements on file for a uniform fee of Two Dollars ($2.00) per page naming a particular debtor when the request is made on the form and in the manner hereinbefore provided for listing the same.

(e) After December 31, 2008, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this state, all former-Chapter-9 records, including the related index.

(f) This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

(1) The collateral is timber to be cut or as-extracted collateral, or

(2) The record is or relates to a financing statement filed as a fixture filing and the collateral is goods that are or are to become fixtures.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2002, ch. 453, § 3, eff from and after Jan. 1, 2002.

PART 8.

TRANSITION PROVISIONS FOR 2013 AMENDMENTS.

SEC.
75-9-801. Effective date.
75-9-802. Savings clause.
75-9-803. Security interest perfected before July 1, 2013.
75-9-804. Security interest unperfected before July 1, 2013.
75-9-805. Effectiveness of action taken before July 1, 2013.
75-9-806. When initial financing statement suffices to continue effectiveness of financing statement.
75-9-807. Amendment of pre-effective-date financing statement.
75-9-808. Person entitled to file initial financing statement or continuation statement.

75-9-809. Priority.

§ 75-9-801. Effective date.

Chapter 451, Laws of 2013, takes effect on July 1, 2013.

SOURCES: Laws, 2013, ch. 451, § 20, eff from and after July 1, 2013.

§ 75-9-802. Savings clause.

(a) Except as otherwise provided in this part, Chapter 451, Laws of 2013, applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(b) Chapter 451, Laws of 2013, does not affect an action, case, or proceeding commenced before July 1, 2013.

SOURCES: Laws, 2013, ch. 451, § 21, eff from and after July 1, 2013.

§ 75-9-803. Security interest perfected before July 1, 2013.

(a) A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under Article 9 as amended by Chapter 451, Laws of 2013, if, on July 1, 2013, the applicable requirements for attachment and perfection under Article 9 as amended by Chapter 451, Laws of 2013, are satisfied without further action.

(b) Except as otherwise provided in Section 75-9-805, if, immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under Article 9 as amended by Chapter 451, Laws of 2013, are not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for perfection under Article 9 as amended by Chapter 451, Laws of 2013, are satisfied within one (1) year after July 1, 2013.

SOURCES: Laws, 2013, ch. 451, § 22, eff from and after July 1, 2013.

§ 75-9-804. Security interest unperfected before July 1, 2013.

A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(1) Without further action, on July 1, 2013, if the applicable requirements for perfection under Article 9 as amended by Chapter 451, Laws of 2013, are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

SOURCES: Laws, 2013, ch. 451, § 23, eff from and after July 1, 2013.

§ 75-9-805. Effectiveness of action taken before July 1, 2013.

(a) The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 9 as amended by Chapter 451, Laws of 2013.

(b) Chapter 451, Laws of 2013, does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 as it existed before amendment. However, except as otherwise provided in subsections (c) and (d) and Section 75-9-806, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had Chapter 451, Laws of 2013, not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after July 1, 2013, does not continue the effectiveness of the financing statement filed before July 1, 2013. However, upon the timely filing of a continuation statement after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in Article 9 as amended by Chapter 451, Laws of 2013, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 as it existed before amendment, only to the extent that Article 9 as amended by Chapter 451, Laws of 2013, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed after July 1, 2013, is effective only to the extent that it satisfies the requirements of Part 5 as amended by Chapter 451, Laws of 2013, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 75-9-503(a)(2) as amended by Chapter 451, Laws of 2013. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of Section 75-9-503(a)(3) as amended by Chapter 451, Laws of 2013.

SOURCES: Laws, 2013, ch. 451, § 24, eff from and after July 1, 2013.

§ 75-9-806. When initial financing statement suffices to continue effectiveness of financing statement.

(a) The filing of an initial financing statement in the office specified in Section 75-9-501 continues the effectiveness of a financing statement filed before July 1, 2013, if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under Article 9 as amended by Chapter 451, Laws of 2013;

(2) The pre-effective-date financing statement was filed in an office in another state; and

(3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before July 1, 2013, for the period provided in unamended Section 75-9-515 with respect to an initial financing statement; and

(2) If the initial financing statement is filed after July 1, 2013, for the period provided in Section 75-9-515 as amended by Chapter 451, Laws of 2013, with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of Part 5 as amended by Chapter 451, Laws of 2013, for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

SOURCES: Laws, 2013, ch. 451, § 25, eff from and after July 1, 2013.

§ 75-9-807. Amendment of pre-effective-date financing statement.

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before July 1, 2013.

(b) After July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Article 9 as amended by Chapter 451, Laws of 2013. However, the effectiveness of a pre-effective-date financing statement may also be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2013, only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in Section 75-9-501;

(2) An amendment is filed in the office specified in Section 75-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 75-9-806(c); or

(3) An initial financing statement that provides the information as amended and satisfies Section 75-9-806(c) is filed in the office specified in Section 75-9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 75-9-805(c) and (e) or 75-9-806.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after July 1, 2013, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 75-9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Article 9 as amended by Chapter 451, Laws of 2013, as the office in which to file a financing statement.

SOURCES: Laws, 2013, ch. 451, § 26, eff from and after July 1, 2013.

§ 75-9-808. Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before July 1, 2013; or

(B) To perfect or continue the perfection of a security interest.

SOURCES: Laws, 2013, ch. 451, § 27, eff from and after July 1, 2013.

§ 75-9-809. Priority.

Chapter 451, Laws of 2013, determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, Article 9 as it existed before amendment determines priority.

SOURCES: Laws, 2013, ch. 451, § 28, eff from and after July 1, 2013.

CHAPTER 10

Uniform Commercial Code—Effective Date and Repealer

SEC.
75-10-101. Effective date.
75-10-102. Specific repealer; provision for transition.
75-10-103. General repealer.
75-10-104. Repealed

§ 75-10-101. Effective date.

This code shall become effective on and after March 31, 1968. It applies to transactions entered into and events occurring after that date.

SOURCES: Codes, 1942, § 41A:10-101; Laws, 1966, ch. 316, § 10-101, eff on and after March 31, 1968.

JUDICIAL DECISIONS

1. In general.
2. Pre-code transactions, generally.
3. Refinancing of prior transaction.
4. Breach of pre-code contract.

1. In general.

Date of sale of machine is determinative date for applicability of Code warranty. Blankenship v. Morrison Mach. Co., 255 Md. 241, 257 A.2d 430 (1969), but see, Firestone Tire & Rubber Co. v. Cannon, 53 Md. App. 106, 452 A.2d 912 (1982).

Where contract to supply fuel for one of plaintiff's two nuclear power plants, which was entered into before effective date of Florida Uniform Commercial Code, bound plaintiff to buy and defendant to sell such fuel, and also granted plaintiff option to purchase fuel for a second nuclear power plant, and where such option was exercised by plaintiff after effective date of Florida Uniform Commercial Code, court held (1) that under Florida UCC §§ 10-101 and 10-102(2), provisions of Florida Uniform Commercial Code applied only to second fuel contract, which arose when plaintiff exercised option to purchase fuel for second power plant, and did not apply to original contract to furnish fuel for plaintiff's first power plant, since plaintiff's exercise of option to purchase fuel for second power plant was not an "event" within meaning of Florida UCC § 10-101; and (2) that as a result, defendant could not rely on Florida UCC § 2-615(a) to excuse nonperformance of its obligations under the original fuel contract, but could rely on such statute with respect to nonperformance of its obligations under the second contract. Florida Power & Light Co. v. Westinghouse Elec. Corp., 579 F.2d 856 (4th Cir. Va. 1978).

Any transfer of plaintiff shareholder's shares, to corporation or otherwise, would be "transaction" entered into and occurring after effective date of Delaware UCC, within meaning of § 10-101, and such transfer would be governed by UCC. B & H Whse., Inc. v. Atlas Van Lines, 348 F. Supp. 517 (N.D. Tex. 1972), rev'd on other grounds, 490 F.2d 818 (5th Cir. Tex. 1974).

Uniform Commercial Code was fully applicable to action on note antedating effective date of statute, where transactions and events which precipitated demand for payment and made notes actionable occurred after effective date. Humble Oil & Ref. Co. v. Copley, 213 Va. 449, 192 S.E.2d 735 (1972).

UCC provisions dispensing with privity requirement do not apply retroactively. Kates v. Pepsi Cola Bottling Co., 263 A.2d 308 (Del. Super. 1970).

Where corporations wrongfully transferred stock upon forged signatures of the plaintiff trustee, in November of 1962, and notice of the illegal transfers reached the plaintiff trustee in July of 1963, § 8-405 of the Uniform Commercial Code would not be applied prospectively to bar the plaintiff trustee's cause of actions against the corporations by estopping her from asserting the ineffectiveness of the forged indorsement. Scovenna v. AT & T Co., 54 Misc. 2d 74 (1967).

2. Pre-code transactions, generally.

Promissory note executed prior to effective date of Code was governed by pre-Code law, but second note dated after effective date of Code was separate transaction to which Code did apply. In re Appliance Packing & Warehousing Corp., 358 F. Supp. 84 (S.D.N.Y. 1972), aff'd, 475 F.2d 1011 (2d Cir. N.Y. 1973).

Chattel Mortgage Act, and not UCC, was applicable to determine right of mortgagee of tractor as against consignee's creditor where chattel mortgage was executed and filed prior to effective date of UCC. American Nat'l Bank v. Etter, 28 Colo. App. 511, 476 P.2d 287 (1970).

Holder of valid chattel mortgage under pre-Code law continued to have valid security interest even after passage of UCC. American Nat'l Bank v. First Nat'l Bank, 28 Colo. App. 486, 476 P.2d 304 (1970).

Where chattel mortgage with after-acquired property clause was properly recorded before enactment of Code, it was not necessary that there be Code-filing to protect security interest in after-acquired property, where Code had become effective prior to debtor's acquisition of after-acquired property. GECC v. R.A. Heintz Constr. Co., 302 F. Supp. 958 (D. Or. 1969).

Pre-Code security interest may survive interest subsequently acquired by buyer in ordinary course of business. GECC v. Western Crane & Rigging Co., 184 Neb. 212, 166 N.W.2d 409 (1969).

The rights of a plaintiff against a retail seller of masonry nails for breach of an implied warranty of merchantability are governed by the Personal Property Law, where the transaction of sale occurred prior to the effective date of the UCC. Schwartz v. Macrose Lumber & Trim Co., 50 Misc. 2d 547 (1966), motion denied, 50 Misc. 2d 1055, 272 N.Y.S.2d 227 (1966), rev'd on other grounds, 29 A.D.2d 781, 287 N.Y.S.2d 706 (2d Dep't 1968), aff'd, 24 N.Y.2d 856, 301 N.Y.S.2d 91, 248 N.E.2d 920 (1969).

Agreements entered into prior to effective date of Code are regulated by pre-Code law as to filing priorities, remedies, and like under agreement. In re Kokomo Times Publishing & Printing Corp., 301 F. Supp. 529 (S.D. Ind. 1968).

As to transactions occurring prior to effective date of Code, rights of parties must be determined in accordance with pre-Code law under Code § 10-101. Redmond v. Lilly, 273 N.C. 446, 160 S.E.2d 287 (1968).

As to transactions entered into before effective date of Code, Pre-Code law controlled and although parties were not precluded from refinancing transaction after effective date of Code to bring transaction within its provisions, transaction entered into on day before Code's effective date could not be "validly entered into" by agreement of parties as to applicability of Code. Scott v. Stocker, 380 F.2d 123 (10th Cir. Okla. 1967).

The interest of a secured party is determined by the prior law where the transactions occurred before the adoption of the Code. American Sterilizer Co. v. Brown, 378 F.2d 237 (2d Cir. N.Y. 1967).

Where corporations wrongfully transferred stock upon forged signatures of the plaintiff trustee, in November of 1962, and notice of the illegal transfers reached the plaintiff trustee in July of 1963, § 8-405 of the Uniform Commercial Code would not be applied prospectively to bar the plaintiff trustee's cause of actions against the corporations by estopping her from asserting the ineffectiveness of the forged indorsement. Scovenna v. AT & T Co., 54 Misc. 2d 74 (1967).

Issues arising between an assignee for the benefit of creditors and the owner of machinery allegedly leased to the debtor are not controlled by the Uniform Commercial Code, where the lease agreement had been signed prior to the effective date of the Code. In re Merkel, Inc., 46 Misc. 2d 270 (1965).

3. Refinancing of prior transaction.

UCC applied to pre-Code indebtedness secured by bill of sale to secure debt, where security agreement was substituted and financing statement filed after

Code was in effect. United States v. Big Z Whse., 311 F. Supp. 283 (S.D. Ga. 1970).

The Code applies to a security interest created before the effective date of the Code where there has been a refiling under the Code after its effective date. Denis v. Shirl-Re Realty Corp., 4 U.C.C. Rep. Serv. 609 (1967, NY Sup).

A refinancing agreement and an agreement to amend a chattel mortgage are both subject to the Code where they are executed after the effective date of the Code although the original transaction occurred before the effective date of the Code. A.J. Armstrong Co. v. Janburt Embroidery Corp., 97 N.J. Super. 246, 234 A.2d 737 (L. Div. 1967).

Refinance note dated May 15, 1963, and extension agreement dated June 1963, purporting to amend 1960 chattel mortgage securing 1960 notes were governed by Code, which became effective on January 1, 1963; under Code § 10-101 (3), it is presumed that those portions of mortgage not so amended were satisfactory to parties in light of law at time of modifications. A.J. Armstrong Co. v. Janburt Embroidery Corp., 97 N.J. Super. 246, 234 A.2d 737 (L. Div. 1967).

4. Breach of pre-code contract.

Long-arm statute, part of South Carolina Code (SC UCC §§ 2-801 to 2-809), applies to breach of contract and simultaneous accrual of cause of action after effective date of Code, even though contract was entered into before effective date of Code. Deering Milliken Research Corp. v. Textured Fibres, Inc., 415 F.2d 875, 163 U.S.P.Q. 69 (4th Cir. S.C. 1969), on remand, 310 F. Supp. 491, 165 U.S.P.Q. 56 (D.S.C. 1970).

§ 75-10-102. Specific repealer; provision for transition.

(1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

(a) The Uniform Negotiable Instruments Act, being Sections 42 to 237, inclusive, of Chapter 3, Title 2, Mississippi Code of 1942, Recompiled, as amended;

(b) The Uniform Warehouse Receipts Act, being Sections 5012 to 5070, inclusive, of Chapter 16, Title 19, Mississippi Code of 1942, Recompiled;

(c) The Uniform Trust Receipts Act, being Sections 5080-01 to 5080-23, inclusive, of Chapter 17, Title 19, Mississippi Code of 1942, Recompiled, as amended;

(d) The Uniform Stock Transfer Act, being Sections 5359-01 to 5359-26 of Chapter 4, Title 21, Mississippi Code of 1942, Recompiled, as amended;

(e) Sections 243-01 to 243-10, inclusive, of Chapter 3A, Title 2, Mississippi Code of 1942, Recompiled, entitled "Assignment of accounts receivable";

(f) Section 268 of Chapter 7, Title 2, Mississippi Code of 1942, Recompiled, entitled "Statute of frauds-sales of personal property";

(g) Section 274 of Chapter 7, Title 2, Mississippi Code of 1942, Recompiled, entitled "To prevent fraudulent sales of merchandise-what presumed to be fraud" (commonly referred to as the "Bulk Sales Law");

(h) Section 337 of Chapter 5, Title 3, Mississippi Code of 1942, Recompiled, entitled "Purchase-money-lien on personal property";

(i) The "Factors Lien Act," being Sections 382-11 to 382-20, inclusive, of Chapter 5, Title 3, Mississippi Code of 1942, Recompiled;

(j) Section 851 of Chapter 2, Title 7, Mississippi Code of 1942, Recompiled, entitled "Chattel mortgages on property owned or to be acquired valid, when";

(k) Section 863 of Chapter 2, Title 7, Mississippi Code of 1942, Recompiled, entitled "Where conveyance of personal property recorded";

(*l*) Section 870 of Chapter 2, Title 7, Mississippi Code of 1942, Recompiled, entitled "Foreign mortgages or (sic) personal property recorded";

(m) Section 884 of Chapter 2, Title 7, Mississippi Code of 1942, Recompiled, entitled "Chattel record books";

(n) Section 5218 of Chapter 2, Title 21, Mississippi Code of 1942, Recompiled, entitled "Collections may be forwarded direct";

(o) Section 5218.5 of Chapter 2, Title 21, Mississippi Code of 1942, Recompiled, entitled "Dishonor or revocation of credit as to demand items";

(p) Section 5278-02 of Chapter 2, Title 21, Mississippi Code of 1942, Recompiled, entitled "Stop payment of checks or drafts-limitations";

(q) Section 5278-04 of Chapter 2, Title 21, Mississippi Code of 1942, Recompiled, entitled "Limitation of time for presentation of check";

(r) Section 5278-11 of Chapter 2, Title 21, Mississippi Code of 1942, Recompiled, entitled "Final adjustment of statements of account by bank with its depositors";

(s) Section 7880 of Chapter 7, Title 28, Mississippi Code of 1942, Recompiled, entitled "Bill of lading conclusive of receipts of goods"; and

(t) Section 7881 of Chapter 7, Title 28, Mississippi Code of 1942, Recompiled, entitled "Bank to retain money collected on bill of lading."

(2) Transactions validly entered into before the effective date specified in Section 75-10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this code as though such repeal or amendment has not occurred.

SOURCES: Codes, 1942, § 41A:10-102; Laws, 1966, ch. 316, § 10-102, eff March 31, 1968.

Cross References — Filing for perfecting security interests, see § 75-9-401 et seq. Repeal of inconsistent acts, see § 75-10-103.

JUDICIAL DECISIONS

1. In general.

The repeal of a statute abolishes it as though it never existed. Accordingly, the adoption of the Uniform Commercial Code (art 10) and the repeal of article 4 of the Personal Property Law effectively abolished a secured party's cause of action against a third-party tort-feasor for tortious destruction of collateral. Bank of N.Y. v. Margiotta, 99 Misc. 2d 423 (1979).

Where contract to supply fuel for one of plaintiff's two nuclear power plants, which was entered into before effective date of Florida Uniform Commercial Code, bound plaintiff to buy and defendant to sell such fuel, and also granted plaintiff option to purchase fuel for a second nuclear power plant, and where such option was exercised by plaintiff after effective date of Florida Uniform Commercial Code, court held (1) that under Florida UCC §§ 10-101 and 10-102(2), provisions of Florida Uniform Commercial Code applied only to second fuel contract, which arose when plaintiff exercised option to purchase fuel for second power plant, and did not apply to original contract to furnish fuel for plaintiff's first power plant, since plaintiff's exercise of option to purchase fuel for second power plant was not an "event" within meaning of Florida UCC § 10-101; and (2) that as a result, defendant could not rely on Florida UCC § 2-615(a) to excuse nonperformance of its obligations under the original fuel contract, but could rely on such statute with respect to nonperformance of its obligations under the second contract. Florida Power & Light Co. v. Westinghouse Elec. Corp., 579 F.2d 856 (4th Cir. Va. 1978).

Transitional provisions of UCC § 10-102(2) must be considered in construing term "events" in UCC § 10-101. Florida Power & Light Co. v. Westinghouse Elec. Corp., 579 F.2d 856, 24 U.C.C. Rep. Serv. 486 (4th Cir. Va. 1978) (applying Florida law; stating that while term "event" is not defined in Uniform Commercial Code, it is inconceivable that any duty imposed by precode law, which might have to be performed after effective date of adoption of the code, is an "event" contemplated by UCC § 10-101).

Where controlling events in interpleader action involving conflicting claims to proceeds of note occurred before effective date of Alabama's adoption of Uniform Commercial Code, transaction was governed by pre-UCC law pursuant to UCC § 10-102(2). Blakeney v. Dee, 363 So. 2d 313 (Ala. 1978), on remand, 363 So. 2d 316 (Ala. Civ. App. 1978).

Action for price of goods, wares and merchandise sold and delivered to buyer on open account was not time barred by the general statute of limitations of three years for oral contracts even though the purchases were incurred more than three but less than five years prior to filing of action, since, under UCC § 10-102 and 2-102, the five-year period of limitations of UCC § 2-725 superseded the pre-existing general statute and abrogated distinctions between oral and written sales contracts for purposes of statutes of limitations. Sesow v. Swearingen, 552 P.2d 705 (Okla. 1976).

Law in effect before adoption of UCC determined question whether repossessing conditional vendor was required to sell collateral as condition to obtain deficiency judgment, even though property was repossessed after effective date of UCC, where contract was entered into prior to that date. B & M Whsle. Co. v. Anchor Ranch, Inc., 96 Idaho 518, 531 P.2d 1163 (1975).

Mere fact that 22 of scheduled 24 instalment payments upon promissory note were due after effective date of UCC in New York did not make Code applicable to note executed prior to effective date. In re Appliance Packing & Warehousing Corp., 475 F.2d 1011 (2d Cir. N.Y. 1973).

Promissory note executed prior to effective date of Code was governed by pre-Code law, but second note dated after effective date of Code was separate transaction to which Code did apply. In re Appliance Packing & Warehousing Corp., 358 F. Supp. 84 (S.D.N.Y. 1972), aff'd, 475 F.2d 1011 (2d Cir. N.Y. 1973).

Operative date for determining whether 4-year UCC or 6-year pre-code statute of limitations applied to action for breach of warranty was date when transaction was entered into, rather than date when action accrued. Great Atl. & Pac. Tea Co. v. Rust Eng'g Co., 75 Misc. 2d 920 (1973).

Security agreement entered into 10 months before effective date of UCC in both Texas and North Dakota, is governed by prior law, even as to those aspects of transaction, including foreclosure, that took place after effective date of Code. Empire Life Ins. Co. of Am. v. Valdak Corp., 468 F.2d 330 (5th Cir. Tex. 1972).

Security interest created prior to UCC could be perfected under UCC. In re Midwest Eng'g Co., 425 F.2d 820 (10th Cir. Kan. 1970).

Mortgagee went into possession of goods in question approximately one month before Code became effective and about four months before mortgagor declared bankruptcy; question of priorities to chattels did not arise until bankruptcy occurred-three months after Code went into effect-since it was at date of bankruptcy that trustee had to assemble property of bankruptcy for administration; bankruptcy and continued possession of goods by mortgagee are controlling events, as far as present litigation is concerned; both of these events occurred after Code's effective date; held, according to Code, such events which occur after its effective date are controlled by its provisions. August v. Poznanski, 383 Mich. 151, 174 N.W.2d 807 (1970).

Where note was dated May 2, 1961 and payable on demand or by May 5, 1962, and where Code became effective on September 1, 1963, question of whether one who for consideration assumes and pays obligation of accommodation maker on negotiable promissory note can sue principal maker on note was governed by repealed provisions of Negotiable Instruments Law under Code provision that transactions entered into prior to effective date of Code are to be enforced and terminated under prior law (apparently Code § 10-102(2)). Jenks Hatchery, Inc. v. Elliott, 252 Or. 25, 448 P.2d 370 (1968).

Under Code § 10-102, validity of sales held after effective date of Code was governed by pre-Code law, where mortgage agreement providing for such sale had been entered into prior to effective date of Code. Phoenix v. Kovacevich, 246 Cal. App. 2d 774 (5th Dist. 1966).

Issues arising between an assignee for the benefit of creditors and the owner of machinery allegedly leased to the debtor are not controlled by the Uniform Commercial Code, where the lease agreement had been signed prior to the effective date of the Code. In re Merkel, Inc., 46 Misc. 2d 270 (1965).

§ 75-10-103. General repealer.

Except as provided in Section 75-10-104, all laws and parts of laws inconsistent with this code are hereby repealed.

SOURCES: Codes, 1942, § 41A:10-103; Laws, 1966, ch. 316, § 10-103, eff March 31, 1968.

Cross References — Construction of this code so as to avoid implied repeal by subsequent legislation, see § 75-1-104.

JUDICIAL DECISIONS

1. In general.

The Business Sign Statute (§ 15-3-7) does not violate the Due Process Clause of the Fourteenth Amendment and was not repealed by implication in § 75-10-103, but was virtually continued by express direction in § 75-2-326(3)(a); furniture and office equipment "used or acquired" in the business was subject to execution and sale under the statute. Date Shoe, Inc. v. Nichols, 642 F.2d 146 (5th Cir. Miss. 1981), reh'g denied, 647 F.2d 1121 (5th Cir. 1981).

§ 75-10-104. Repealed.

Repealed by Laws, 2006, ch. 527, § 71, effective July 1, 2006.

Editor's Note — Former § 75-10-104 was entitled: "Laws not repealed."

Laws of 2006, ch. 527, § 71 provides:

"SECTION 71. Section 75-10-104, Mississippi Code of 1972, which provides that Title 75, Chapter 7, on documents of title does not repeal or modify other laws concerning titles and bailment, is repealed because the substance thereof has been incorporated in Section 75-7-103(2)."

CHAPTER 11

Uniform Commercial Code—Effective Date and Transition Provisions: 1977 Amendments

Sec.

75-11-101. Effective date.
75-11-102. Preservation of old transition provision.
75-11-103. Transition to revised U.C.C.; general rule.
75-11-104. Transition provision on change of requirement of filing.
75-11-105. Transition provision on change of place of filing.
75-11-106. Required refilings.
75-11-107. Transition provisions as to priorities.
75-11-108. Presumption that rule of law continues unchanged.

Editor's Note — The provisions of Chapter 452, Laws of 1977, referred to in this chapter, amended existing 1972 Code §§ 75-1-105, 75-1-201, 75-2-107, 75-5-116, 75-9-102, 75-9-103, 75-9-104, 75-9-105, 75-9-106, 75-9-203, 75-9-204, 75-9-205, 75-9-301, 75-9-302, 75-9-304, 75-9-305, 75-9-306, 75-9-307, 75-9-308, 75-9-312, 75-9-313, 75-9-318, 75-9-401, 75-9-402, 75-9-403, 75-9-404, 75-9-406, 75-9-407, 75-9-501, 75-9-502, 75-9-504 and 75-9-505, transferred existing 1972 Code § 75-9-408 to § 75-9-410, and added new 1972 Code §§ 75-9-408, 75-11-101, 75-11-102, 75-11-103, 75-11-104, 75-11-105, 75-11-106, 75-11-107 and 75-11-108.

---

§ 75-11-101. Effective date.

The provisions of Chapter 452, Laws of 1977, shall become effective on April 1, 1978. As used in this chapter, the term "old U.C.C." shall refer to the original Uniform Commercial Code adopted in 1967, and all amendments thereto and the term "revised U.C.C." shall refer to the old U.C.C. as amended by Chapter 452, Laws of 1977.

SOURCES: Laws, 1977, ch. 452, § 37; Laws, 1978, ch. 401, § 2, eff from and after April 1, 1978.

§ 75-11-102. Preservation of old transition provision.

The provisions of Section 75-10-102(2) shall continue to apply to the revised U.C.C., and for this purpose the old U.C.C. and the revised U.C.C. shall be considered one continuous statute.

SOURCES: Laws, 1977, ch. 452, § 37, eff from and after April 1, 1978.

§ 75-11-103. Transition to revised U.C.C.; general rule.

Transactions validly entered into after March 31, 1968 and before April 1, 1978, and which were subject to the provisions of the old U.C.C. and which would be subject to the amendments of Chapter 452, Laws of 1977 if they had been entered into after April 1, 1978 and the rights, duties and interests flowing from such transactions remain valid after April 1, 1978 and may be terminated, completed, consummated or enforced as required or permitted by the revised U.C.C. security interests arising out of such transactions which are perfected on April 1, 1978, shall remain perfected until they lapse as provided in the revised U.C.C., and may be continued as permitted by the revised U.C.C., except as stated in Section 75-11-105.

SOURCES: Laws, 1977, ch. 452, § 37; Laws, 1978, ch. 401, § 3, eff from and after April 1, 1978.

§ 75-11-104. Transition provision on change of requirement of filing.

A security interest for the perfection of which filing or the taking of possession was required under the old U.C.C. and which attached prior to April 1, 1978 but was not perfected shall be deemed perfected on April 1, 1978 if the revised U.C.C. permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

SOURCES: Laws, 1977, ch. 452, § 37; Laws, 1978, ch. 401, § 4, eff from and after April 1, 1978.

§ 75-11-105. Transition provision on change of place of filing.

(1) A financing statement or continuation statement filed prior to April 1, 1978 which shall not have lapsed prior to that date shall remain effective for the period provided in the old U.C.C., but not less than five (5) years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to April 1, 1978, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the revised U.C.C.

(3) The effectiveness of any financing statement or continuation statement filed prior to April 1, 1978 may be continued by a continuation statement as permitted by the revised U.C.C., except that if the revised U.C.C. requires a filing in an office where there was no previous financing statement, a new financing statement conforming to Section 75-11-106 shall be filed in that office.

SOURCES: Laws, 1977, ch. 452, § 37; Laws, 1978, ch. 401, § 5, eff from and after April 1, 1978.

§ 75-11-106. Required refilings.

(1) If a security interest is perfected or has priority on April 1, 1978, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the revised Uniform

Commercial Code, the perfection and priority rights of the security interest shall continue until three (3) years after April 1, 1978. The perfection will then lapse unless a financing statement is filed as provided in Section 75-11-104 or unless the security interests is perfected otherwise than by filing.

(2) A financing statement may be filed within six (6) months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by Chapter 452, Laws of 1977), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the old Uniform Commercial Code or under any statute or other law repealed or modified by Chapter 452, Laws of 1977, is still effective. Section 75-9-501 determines the proper place to file such a financing statement. Except as specified in this subsection, the provisions of Section 75-9-510 for continuation statements apply to such a financing statement.

SOURCES: Laws, 1977, ch. 452, § 37; Laws, 1978, ch. 401, § 6; Laws, 2001, ch. 495, § 30, eff from and after Jan. 1, 2002.

§ 75-11-107. Transition provisions as to priorities.

Except as otherwise provided in this chapter, the old U.C.C. shall apply to any questions of priority if the positions of the parties were fixed prior to April 1, 1978. In other cases, questions of priority shall be determined by the revised U.C.C.

SOURCES: Laws, 1977, ch. 452, § 37; Laws, 1978, ch. 401, § 7, eff from and after April 1, 1978.

§ 75-11-108. Presumption that rule of law continues unchanged.

Unless a change in law has clearly been made, the provisions of the revised U.C.C. shall be deemed declaratory of the meaning of the old U.C.C.

SOURCES: Laws, 1977, ch. 452, § 37, eff from and after April 1, 1978.

Index

A

ACCESSIONS.
Secured transactions.
  Defined, §75-9-102.
  Priority and perfection of security interests, §75-9-335.

ACCIDENT AND HEALTH INSURANCE.
Secured transactions.
  Health-care-insurance receivables.
    Restrictions on assignments, §§75-9-406, 75-9-408.

ACCOUNTS AND ACCOUNTING.
Secured transactions.
  Request for accounting, §75-9-210.

ACCOUNTS RECEIVABLE.
Sale of accounts.
  Secured transactions, §§75-9-101 to 75-9-710.

AFTER-ACQUIRED PROPERTY.
Secured transactions.
  Security interest in, §75-9-204.

AGRICULTURAL LIENS.
Secured transactions.
  Default, time of, §75-9-606.
  Defined, §75-9-102.
  Generally, §§75-9-101 to 75-9-710.
  Interests which take priority over or free from, §75-9-317.
  Perfection and priority.
    Conflicting liens, §75-9-322.
    Financing statement providing incorrect information, §75-9-338.
    Law governing, §75-9-302.
    Production-money security interest and lien in same collateral, §75-9-324A.
    Same collateral, §75-9-322.
    When filing required to perfect, §75-9-310.
    When perfected, §75-9-308.

AGRICULTURE.
Liens.
  Secured transactions.
    Default, time of, §75-9-606.
    Defined, §75-9-102.
    Generally, §§75-9-101 to 75-9-710.

AGRICULTURE —Cont'd
Liens —Cont'd
  Secured transactions —Cont'd
    Perfection and priority.
      Conflicting interests and agricultural liens, §75-9-322.
      Filed financing statement providing certain incorrect information.
        Priority of agricultural lien perfected by, §75-9-338.
      Interests that take priority over or take free of agricultural lien, §75-9-317.
      Law governing, §75-9-302.
      Priorities among agricultural liens on same collateral, §75-9-322.
      Production-money security interest and lien in same collateral, §75-9-324A.
      When perfected, §75-9-308.

ASSIGNMENTS.
Secured transactions.
  Account debtor notified of assignment.
    Duties of secured party, §75-9-209.
  Agreement not to assert defenses against assignee, §75-9-403.
  Modification or substitution for assigned contract, §75-9-405.
  Notice of assignment, §75-9-406.
  Powers of secured party of record, §75-9-514.
  Restrictions on assignments of letter of credit rights, §75-9-409.
  Restrictions on certain assignments, §75-9-408.
  Rights of assignee, §75-9-404.

B

BANKS AND FINANCIAL INSTITUTIONS.
Commercial code.
  Secured transactions, §§75-9-101 to 75-9-710.
Deposit accounts.
  Secured transactions.
    Generally, §§75-9-101 to 75-9-710.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

BONA FIDE PURCHASERS.
Secured transactions.
  Priority of buyer in ordinary course of business, §75-9-320.
  Purchase from cosignee while goods in possession of cosignee, §75-9-319.
  Purchaser of chattel paper, priority, §75-9-330.
  Sale of account or chattel paper.
    Buyer's security interest unperfected, §75-9-318.

BURDEN OF PROOF.
Secured transactions.
  Establishing purchase-money security interest, §75-9-103.

C

CERTIFICATES OF TITLE.
Secured transactions.
  Goods covered by certificate of title.
    Priority of security interest in, §75-9-337.
  Law governing perfection and priority.
    Goods covered by certificate of title, §75-9-303.

CHATTEL PAPER.
Secured transactions.
  Electronic chattel paper.
    Control, §75-9-105.
    Duties of secured party having control of collateral, §75-9-208.
    Perfection by control, §75-9-314.
  Generally, §§75-9-101 to 75-9-710.
  Perfection of security interest in, §75-9-312.
  Priority of purchaser, §75-9-330.

COLLATERAL.
Secured transactions, §§75-9-101 to 75-9-710.

COMMERCIAL CODE.
Effective date and transition, §75-10-101.
  1977 amendments.
    Change in place of filing, §75-11-105.
    Change of requirement of filing, §75-11-104.
    Effective date, §75-11-101.
    Presumption of unchanged rule of law, §75-11-108.
    Priorities, transition provisions, §75-11-107.
    Required refilings, §75-11-106.

COMMERCIAL CODE —Cont'd
Effective date and transition —Cont'd
  1977 amendments —Cont'd
    Transition provisions preserved, §75-11-102.
    Transition to revised code, §75-11-103.
  Repeal of inconsistent provisions, §75-10-103.
  Transition provisions, §75-10-102.
Secured transactions, §§75-9-101 to 75-9-710.

COMMERCIALLY REASONABLE CONDUCT.
Secured transactions.
  Secured party's collection and enforcement after default.
    Determining if conduct commercially reasonable, §75-9-627.

COMMODITIES.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

COMPUTERS AND SOFTWARE.
Secured transactions.
  Purchase-money security interest in software, §75-9-103.

CONFLICT OF LAWS.
Commercial code.
  Repeal of inconsistent provisions, §75-10-103.
  Secured transactions.
    Law governing perfection and priority, §§75-9-301 to 75-9-307.
Secured transactions.
  Law governing perfection and priority, §§75-9-301 to 75-9-307.

CONSIGNMENT SALES.
Secured transactions.
  Financing statements, §75-9-408.

CONTRACTS.
Commercial code.
  Secured transactions, §§75-9-101 to 75-9-710.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

CREDIT SALES.
Secured transactions, §§75-9-101 to 75-9-710.

CREDIT TRANSACTIONS.
Secured transactions, §§75-9-101 to 75-9-710.

CROPS.
Liens.
  Secured transactions.
    Agricultural liens generally, §§75-9-101 to 75-9-710.
    Priority of security interests, §75-9-334.
    Production-money security interests, §75-9-103A.
Secured transactions.
  Priority of security interests, §75-9-334.
  Production-money security interests, §75-9-103A.

D

DEBTORS AND CREDITORS.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

DECEDENTS' ESTATES.
Secured transactions.
  Filing statement, name of debtor, §75-9-503.

DEFAULT OF SECURITY AGREEMENT.
Secured transactions, §§75-9-601 to 75-9-628.

DEFINED TERMS.
Accession.
  Secured transactions, §75-9-102.
Account.
  Secured transactions, §75-9-102.
Account debtor.
  Secured transactions, §75-9-102.
Accounting.
  Secured transactions, §75-9-102.
Agricultural lien.
  Secured transactions, §75-9-102.
As-extracted collateral.
  Secured transactions, §75-9-102.
Authenticate.
  Secured transactions, §75-9-102.
Bank.
  Secured transactions, §75-9-102.
Cash proceeds.
  Secured transactions, §75-9-102.
Certificate of title.
  Secured transactions, §75-9-102.
Chattel paper.
  Secured transactions, §75-9-102.
Collateral.
  Secured transactions, §75-9-102.

DEFINED TERMS —Cont'd
Commercial tort claim.
  Secured transactions, §75-9-102.
Commingled goods.
  Secured transactions, §75-9-336.
Commodity account.
  Secured transactions, §75-9-102.
Commodity contract.
  Secured transactions, §75-9-102.
Commodity customer.
  Secured transactions, §75-9-102.
Commodity intermediary.
  Secured transactions, §75-9-102.
Communicate.
  Secured transactions, §75-9-102.
Consignee.
  Secured transactions, §75-9-102.
Consignment.
  Secured transactions, §75-9-102.
Consignor.
  Secured transactions, §75-9-102.
Construction mortgage.
  Secured transactions, §75-9-313.
Consumer debtor.
  Secured transactions, §75-9-102.
Consumer goods or services.
  Secured transactions, §75-9-102.
Consumer goods transaction.
  Secured transactions, §75-9-102.
Consumer obligor.
  Secured transactions, §75-9-102.
Consumer transaction.
  Secured transactions, §75-9-102.
Continuation statement.
  Secured transactions, §75-9-102.
Debtor.
  Secured transactions, §75-9-102.
Debtor's correct name.
  Secured transactions, §75-9-506.
Deposit accounts.
  Secured transactions, §75-9-102.
Documents.
  Secured transactions, §75-9-102.
Electronic chattel paper.
  Secured transactions, §75-9-102.
Encumbrance.
  Secured transactions, §75-9-102.
Equipment.
  Secured transactions, §75-9-102.
Explanation.
  Secured transactions, §75-9-616.
Farming operation.
  Secured transactions, §75-9-102.
Farm products.
  Secured transactions, §75-9-102.

DEFINED TERMS —Cont'd

File number.
  Secured transactions, §75-9-102.

Filing office.
  Secured transactions, §75-9-102.

Filing office rule.
  Secured transactions, §75-9-102.

Financing statement.
  Secured transactions, §75-9-102.

Fixture filing.
  Secured transactions, §75-9-102.

Fixtures.
  Secured transactions, §75-9-102.

Former Article 9 records.
  Secured transactions, §75-9-710.

General intangibles.
  Secured transactions, §75-9-102.

Goods.
  Secured transactions, §75-9-102.

Governmental unit.
  Secured transactions, §75-9-102.

Health care insurance receivable.
  Secured transactions, §75-9-102.

Instrument.
  Secured transactions, §75-9-102.

Inventory.
  Secured transactions, §75-9-102.

Investment property.
  Secured transactions, §75-9-102.

Jurisdiction of organization.
  Secured transactions, §75-9-102.

Letter of credit right.
  Secured transactions, §75-9-102.

Licensee in ordinary course of business.
  Secured transactions, §75-9-321.

Lien creditor.
  Secured transactions, §75-9-102.

Local filing office.
  Secured transactions, §75-9-710.

Manufactured home or manufactured housing.
  Secured transactions, §75-9-102.

Manufactured home transaction.
  Secured transactions, §75-9-102.

Mortgage.
  Secured transactions, §§75-9-102, 75-9-710.

Name of the settlor or testator.
  Secured transactions, name of debtor and secured party, §75-9-503.

New debtor.
  Secured transactions, §75-9-102.

New value.
  Secured transactions, §75-9-102.

DEFINED TERMS —Cont'd

Noncash proceeds.
  Secured transactions, §75-9-102.

Obligor.
  Secured transactions, §75-9-102.

Original debtor.
  Secured transactions, §75-9-102.

Payment intangible.
  Secured transactions, §75-9-102.

Person related to.
  Secured transactions, §75-9-102.

Place of business.
  Secured transactions, §75-9-307.

Possessory lien.
  Secured transactions, §75-9-333.

Proceeds.
  Secured transactions, §75-9-102.

Production-money crops.
  Secured transactions, §75-9-102.

Production-money obligation.
  Secured transactions, §75-9-102.

Production of crops.
  Secured transactions, §75-9-102.

Promissory notes.
  Secured transactions, §75-9-102.

Proposal.
  Secured transactions, §75-9-102.

Public-finance transaction.
  Secured transactions, §75-9-102.

Public organic record.
  Secured transactions, §75-9-102.

Purchase-money collateral.
  Secured transactions, §75-9-103.

Purchase-money obligation.
  Secured transactions, §75-9-103.

Pursuant to commitment.
  Secured transactions, §75-9-102.

Records.
  Secured transactions, §75-9-102.

Registered organization.
  Secured transactions, §75-9-102.

Request.
  Secured transactions, §§75-9-210, 75-9-616.

Request for an accounting.
  Secured transactions, §75-9-210.

Request regarding a list of collateral.
  Secured transactions, §75-9-210.

Request regarding a statement of account.
  Secured transactions, §75-9-210.

Secondary obligor.
  Secured transactions, §75-9-102.

Secured party.
  Secured transactions, §75-9-102.

DEFINED TERMS —Cont'd
Security agreement.
  Secured transactions, §75-9-102.
Send.
  Secured transactions, §75-9-102.
Software.
  Secured transactions, §75-9-102.
State.
  Secured transactions, §75-9-102.
Supporting obligation.
  Secured transactions, §75-9-102.
Tangible chattel paper.
  Secured transactions, §75-9-102.
Termination statement.
  Secured transactions, §75-9-102.
Transfer statement.
  Secured transactions, §75-9-619.
Transmitting utility.
  Secured transactions, §75-9-102.

DEPOSIT ACCOUNTS.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

DEPOSITS.
Secured transactions.
  Deposit accounts generally, §§75-9-101 to 75-9-710.

DRIVERS' LICENSES.
Secured transactions.
  Name of debtor and secured party, §75-9-503.

E

ELECTRONIC CHATTEL PAPER.
Control, perfection by, §75-9-314.
Secured transactions.
  Control, §75-9-105.

F

FEES.
Secured transactions.
  Filing and indexing of records, §75-9-525.

FINANCIAL INSTITUTIONS.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

FIXTURES.
Secured transactions.
  Filing office, §75-9-501.
  Priority of security interests, §75-9-334.

FIXTURES —Cont'd
Secured transactions —Cont'd
  Rights and duties after default.
    Security agreement covering fixtures, §75-9-604.

FORECLOSURE.
Secured transactions.
  Rights after default, §75-9-601.

FORMS.
Secured transactions.
  Default.
    Notification before disposition, §75-9-613.

FRAUD.
Secured transactions.
  Fraudulent or false filings, §75-9-501.1.

FUTURE ADVANCES.
Secured transactions.
  Perfection and priority, §75-9-323.
  Security interest in, §75-9-204.

H

HEALTH INSURANCE.
Secured transactions.
  Health-care-insurance receivables.
    Restrictions on assignments, §§75-9-406, 75-9-408.

HOLDERS IN DUE COURSE.
Rights.
  Secured transactions, §75-9-331.

I

IDENTIFICATION CARDS.
Secured transactions.
  Name of debtor and secured party, §75-9-503.

INSTALLMENT CONTRACTS.
Secured transactions, §§75-9-101 to 75-9-710.

INVENTORY.
Secured transactions.
  Purchase-money security interest, §75-9-103.

INVESTMENTS.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

INVESTMENT SECURITIES.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

L

LEASES OF GOODS, UCC.
Priorities.
  Transition provisions, §75-11-107.
Secured transactions.
  Restrictions on security interest in leasehold, §75-9-407.
  Security interests arising under, §75-9-110.

LESSEE IN ORDINARY COURSE OF BUSINESS.
Secured transactions.
  Defined, rights taken, §75-9-321.

LETTERS OF CREDIT.
Secured transactions.
  Control of letter of credit right, §75-9-107.
  Perfection and priority in letter of credit right.
    Law governing, §75-9-306.
  Perfection of letter of credit right by control, §75-9-314.
  Perfection of security interest in letter of credit right, §75-9-312.
  Priority of interest in letter of credit right, §75-9-329.
  Restrictions on assignments of letter of credit rights, §75-9-409.

LICENSEE IN ORDINARY COURSE OF BUSINESS.
Secured transactions.
  Defined, rights taken, §75-9-321.

LIENS.
Agricultural liens.
  Secured transactions.
    Generally, §§75-9-101 to 75-9-710.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.
  Liens arising by operation of law, priority, §75-9-333.

LOANS.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

M

MINES AND MINERALS.
Secured transactions.
  Law governing perfection and priority.
    Location of minehead, §75-9-301.

MORTGAGES AND DEEDS OF TRUST.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.
  Record as financing statement, §75-9-502.

N

NEGOTIABLE INSTRUMENTS.
Secured transactions, §§75-9-101 to 75-9-710.

NOTICE.
Secured transactions.
  Repossession on default.
    Notification before disposition, §75-9-611.
      Form and content, §75-9-613.
        Consumer goods transactions, §75-9-614.
      Timeliness, §75-9-612.

P

PERFECTION OF SECURITY INTERESTS.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.

PRESUMPTIONS.
Commercial code.
  Rule of law unchanged under revised code, §75-11-108.

PRIORITY OF INTERESTS.
Secured transactions.
  Generally, §§75-9-101 to 75-9-710.
  Perfection and priority of security interests, §§75-9-301 to 75-9-342.

PRODUCTION-MONEY SECURITY INTEREST.
Secured transactions, §75-9-103A.
  Priority, §75-9-324A.

PROMISSORY NOTES.
Secured transactions.
  Restrictions on certain assignments, §75-9-408.

PURCHASE MONEY.
Secured transactions.
  Burden of establishing security interest, §75-9-103.

PURCHASE-MONEY SECURITY INTERESTS.
Secured transactions.
  Perfection and priority of security interests, §75-9-324.

R

REAL PROPERTY.
Secured transactions.
  Rights and duties after default.
    Security agreement covering real property, §75-9-604.

REDEMPTION.
Secured transactions.
  Default on security agreement.
    Right to redeem collateral, §75-9-623.

REPOSSESSION.
Secured transactions.
  Default, §75-9-609.
    Disposition after, §75-9-610.
      Proceeds, §75-9-615.
      Rights of transferee, §75-9-617.
      Surplus or deficiency of proceeds, §75-9-616.
    Notification before disposition, §75-9-611.
      Contents and form, §75-9-613.
      Form and content.
        Consumer goods transactions, §75-9-614.
      Timeliness, §75-9-612.

S

SALE OF GOODS, UCC.
Secured transactions.
  Security interest arising article, §75-9-110.

SALES.
Secured transactions, §§75-9-101 to 75-9-710.

SALES OF ACCOUNTS.
Secured transactions, §§75-9-101 to 75-9-710.

SECRETARY OF STATE.
Secured transactions.
  Filing office, financing statements, §§75-9-501 to 75-9-527.

SECURED TRANSACTIONS, §§75-9-101 to 75-9-710.
Accessions.
  Perfection and priority of security interest in, §75-9-335.
Accounting.
  Defined, §75-9-102.
  Request for, §75-9-210.
After-acquired property.
  Security interest in, §75-9-204.
Agricultural liens.
  Default.
    Time of default, §75-9-606.
  Defined, §75-9-102.
  Perfection and priority.
    Filed financing statement providing certain incorrect information.
      Priority of agricultural lien perfected by, §75-9-338.
    Filing.
      When required to perfect lien, §75-9-310.
    Interests that take priority over or take free of agricultural lien, §75-9-317.
    Law governing, §75-9-302.
    Priorities among agricultural liens on same collateral, §75-9-322.
    Production-money security interest and lien in same collateral, §75-9-324A.
    When perfected, §75-9-308.
Alienability of debtor's rights, §75-9-401.
All the debtor's assets.
  Description insufficient, §75-9-108.
Applicability of provisions, §§75-9-109, 75-9-110.
Assigned contract, modification or substitution for, §75-9-405.
Assignee, claims and defense against, §75-9-404.
Assignee for value, good faith and without notice.
  Agreement not to assert defenses against assignee, §75-9-403.
Assignee's rights, §75-9-404.
Assignment of powers of secured party, §75-9-514.
Assignment to secured party.
  Account debtor notified.
    Duties of secured party, §75-9-209.

SECURED TRANSACTIONS —Cont'd
Attachment of security interest, §75-9-203.
  Effect on delegation of performance and assignment of rights, §75-9-210.
  Financial asset.
    Security interest arising in purchase or delivery of, §75-9-206.
  Perfection.
    Security interests perfected upon attachment, §75-9-309.
Banks.
  Defined, §75-9-102.
Banks jurisdiction, rules governing, §75-9-304.
Bound as debtor by security agreement entered into by another, §75-9-203.
Chattel paper.
  Perfection of security interests in, §75-9-312.
  Purchaser of chattel paper or instrument.
    Priority, §75-9-330.
Citation of provisions, §75-9-101.
Collateral.
  Control of collateral.
    Rights and duties of secured party having, §§75-9-207, 75-9-208.
  Default.
    Acceptance in full or partial satisfaction of obligation, §§75-9-620 to 75-9-622.
    Disposition after default, §§75-9-610 to 75-9-617.
    Redemption.
      Right to redeem collateral, §75-9-623.
    Transfer of record or legal title, §75-9-619.
  Description.
    Sufficiency, §75-9-108.
  Disposition.
    Permissible, §75-9-205.
    Rights of secured party on, §75-9-315.
  List of collateral.
    Request regarding, §75-9-210.
  Possession of collateral.
    Rights and duties of secured party having, §75-9-207.
  Preservation, duty of secured party, §75-9-207.
  Title immaterial, §75-9-202.

SECURED TRANSACTIONS —Cont'd
Collateral —Cont'd
  Transferred collateral.
    Priority of security interests in, §75-9-325.
  Use permissible, §75-9-205.
Commercially reasonable conduct.
  Secured party's collection and enforcement after default.
    Determining if conduct commercially reasonable, §75-9-627.
Commingled goods, §75-9-336.
Commodity account.
  Description, §75-9-108.
Commodity contract.
  Control of investment property, §75-9-106.
  Priority of security interest in investment property, §75-9-328.
Commodity intermediary's jurisdiction, rule governing, §75-9-305.
Contract of debtor.
  Secured party not obligated on, §75-9-402.
Corps.
  Priority of security interest in, §75-9-334.
Debtor.
  Defined, §75-9-102.
  Location, §75-9-307.
Decedents' estates.
  Filing statement, name of debtor, §75-9-503.
Default.
  Acceptance of collateral in full or partial satisfaction of obligation, §75-9-620.
    Effect, §75-9-622.
    Notification, §75-9-621.
  Agreement on standards concerning rights and duties, §75-9-603.
  Agricultural lien.
    Time of default, §75-9-606.
  Collateral.
    Acceptance in full or partial satisfaction of obligation, §§75-9-620 to 75-9-622.
    Disposition after default, §§75-9-610 to 75-9-617.
    Redemption.
      Right to redeem collateral, §75-9-623.
    Transfer of record or legal title, §75-9-619.

SECURED TRANSACTIONS —Cont'd
Default —Cont'd
  Collection and enforcement by secured party, §75-9-607.
    Application of proceeds, §75-9-608.
    Deficiency liability, §75-9-608.
  Commercially reasonable conduct.
    Determination whether conduct commercially reasonable, §75-9-627.
  Disposition of collateral after, §75-9-610.
    Compulsory disposition, §75-9-620.
    Deficiency.
      Action in which deficiency is in issue, §75-9-626.
      Explanation of calculation of, §75-9-616.
      Liability for, §75-9-615.
    Notification before, §75-9-611.
      Contents and form, §§75-9-613, 75-9-614.
      Timeliness, §75-9-612.
    Proceeds.
      Application, §75-9-615.
    Surplus.
      Action in which surplus is an issue, §75-9-626.
      Explanation of calculation of, §75-9-616.
      Right to, §75-9-615.
    Transferee of collateral.
      Rights, §75-9-617.
  Fixtures.
    Procedure if security agreement covers, §75-9-604.
  Judicial enforcement, §75-9-601.
  Limitation on liability of secured party, §75-9-628.
  Noncompliance with provisions by secured party.
    Remedies, §75-9-625.
  Possession.
    Rights of secured party to take possession after default, §75-9-609.
  Real property.
    Procedure if security agreement covers, §75-9-604.
  Rights after default, §75-9-601.
    Agreement on standards concerning, §75-9-603.
    Waiver and variance, §75-9-602.
  Secondary obligors.
    Liability, §75-9-628.

SECURED TRANSACTIONS —Cont'd
Default —Cont'd
  Secondary obligors —Cont'd
    Rights and duties, §75-9-618.
  Unknown debtor or secondary obligor, §75-9-605.
  Waiver and variance of rights and duties, §75-9-602.
  Waiver of certain rights, §75-9-624.
Definitions, §§75-9-102 to 75-9-103A.
Deposit accounts.
  Bank's rights and duties with respect to, §75-9-341.
    Right of recoupment or set-off against deposit account.
      Effectiveness, §75-9-340.
  Control, §75-9-104.
    Banks refusal to enter into or disclose control agreement, §75-9-342.
  Defined, §75-9-102.
  Perfection and priority of security interest in, §75-9-312.
    Law governing, §75-9-304.
    Perfection by control, §75-9-314.
    Priority of security interests, §75-9-327.
    Transfer of funds from deposit account.
      Transferee takes funds free of security interest, §75-9-332.
Description of property.
  Sufficiency, §75-9-108.
Discharge of account debtor, §75-9-406.
Drivers' licenses.
  Name of debtor and secured party, §75-9-503.
Duties of secured party.
  Account debtor notified of assignment, §75-9-209.
  Control or possession of collateral.
    Secured party having, §§75-9-207, 75-9-208.
Effective date of provisions.
  Amendment of pre-effective financing statement, §75-9-707.
  Effectiveness of action taken before, §75-9-705.
  Financing statement, continuing effectiveness, §75-9-706.
  Interest perfected before, §75-9-703.
  Interest unperfected before, §75-9-704.
  Persons entitled to file financing statement, §75-9-708.

SECURED TRANSACTIONS —Cont'd
Effective date of provisions —Cont'd
  Priority of pre-effective claims, §75-9-709.
Electronic chattel paper.
  Control, §75-9-105.
    Perfection by control, §75-9-314.
  Defined, §75-9-102.
Enforceability of security interest, §75-9-203.
Fees.
  Filing office, §75-9-525.
Filing office, §75-9-501.
  Acceptance and refusal of records, §75-9-519.
  Assigning number to filed record, §75-9-519.
  Delay by office beyond time limit, §75-9-524.
  Destruction of records, §75-9-522.
  Fees, §75-9-525.
  Fraudulent or false filings, §75-9-501.1.
  Indexing financing statements, §75-9-519.
  Information to persons filing records, §75-9-523.
  Local filing office.
    Transitional provisions for searching records, §75-9-710.
  Maintenance of records, §75-9-522.
  Refusal to accept record, §§75-9-520, 75-9-521.
    Fraudulent or false filings, §75-9-501.1.
  Report by secretary of state, §75-9-527.
  Review of record presented for filing, §75-9-501.1.
  Sale or license of records, §75-9-523.
  Uniform form of written financing statement and amendment, §75-9-521.
Filing-office rules, §75-9-526.
  Defined, §75-9-102.
Financial asset.
  Priority of certain interests in, §75-9-331.
  Purchase or delivery of.
    Security interest arising in, §75-9-206.
Financing statement.
  Amendment, §75-9-512.
  Collateral.
    Indication of collateral, §75-9-504.

SECURED TRANSACTIONS —Cont'd
Financing statement —Cont'd
  Compliance with other statutes and treaties, §75-9-505.
  Contents, §75-9-502.
  Duration of effectiveness, §75-9-515.
  Effective date of provisions.
    Amendment of pre-effective statement, §75-9-707.
    Financing statement, continuing effectiveness, §75-9-706.
  Errors and omissions.
    Claims concerning inaccurate or wrongfully filed record, §75-9-518.
    Effect, §75-9-506.
      Indexing errors, §75-9-517.
  Events with impact on effectiveness, §75-9-507.
  Filing, §§75-9-502, 75-9-505.
    Effectiveness, §75-9-516.
    Effectiveness of filed record, §75-9-510.
    In local filing office.
      Searching local records, transitional provisions, §75-9-710.
    Persons entitled to file, §75-9-509.
    Refusal of office to accept, §75-9-516.
    Termination statement, §75-9-513.
    What constitutes, §75-9-516.
    Wrongfully filed record.
      Claims concerning, §75-9-518.
  Information statement.
    Claims concerning inaccurate or wrongfully filed record, §75-9-518.
  Lapsed financing statement.
    Effect, §75-9-515.
  Mortgages.
    Record of mortgage as financing statement, §75-9-502.
  Name of debtor and secured party, §75-9-503.
    Errors and omissions.
      Effect, §75-9-506.
  New debtor becoming bound by security agreement.
    Effectiveness of financing statement, §75-9-508.
  Persons entitled to file financing statement, §75-9-708.
  Refusal of office to accept, §75-9-516.
  Secured party of record, §75-9-511.
    Assignment of powers of, §75-9-514.

SECURED TRANSACTIONS —Cont'd
Financing statement —Cont'd
  Termination statement, §75-9-513.
  Time of filing, §75-9-502.
Fixtures.
  Defaults.
    Procedure when fixtures involved, §75-9-604.
  Filing office, §75-9-501.
  Priority of security interests in, §75-9-334.
Foreign air carriers, location, §75-9-307.
Former Article 9, meaning of references, §75-9-701.
Fraudulent or false filings, §75-9-501.1.
Future advances.
  Priority of security interests, §75-9-323.
  Security interest in, §75-9-204.
Goods covered by certificate of title.
  Law governing perfection and priority, §75-9-303.
  Priority of security interest in, §75-9-337.
Health insurance.
  Health-care-insurance receivables.
    Defined, §75-9-102.
    Restrictions on assignments, §§75-9-406, 75-9-408.
Holders in due course, rights, §75-9-331.
Identification and proof of assignment, §75-9-406.
Investment property.
  Control, §75-9-106.
    Perfection by control, §75-9-314.
  Defined, §75-9-102.
  Perfection and priority of security interests in, §75-9-312.
    Law governing, §75-9-305.
    Perfection by control, §75-9-314.
    Priority of security interests, §75-9-328.
Leases.
  Restrictions on security interest in leasehold interest or in lessor's residual interest, §75-9-407.
Lessee in ordinary course of business.
  Defined, rights taken, §75-9-321.
Letter-of-credit right.
  Assignment.
    Restrictions on assignment ineffective, §75-9-409.

SECURED TRANSACTIONS —Cont'd
Letter-of-credit right —Cont'd
  Control, §75-9-107.
  Defined, §75-9-102.
  Perfection and priority of security interests in, §75-9-312.
    Law governing, §75-9-306.
    Perfection by control, §75-9-314.
    Priority of security interests, §75-9-329.
Licensee in ordinary course of business.
  Defined, rights taken, §75-9-321.
Location of debtor, §75-9-307.
Mortgages.
  Record as financing statement, §75-9-502.
Perfection of security interests.
  Attachment.
    Security interests perfected upon attachment, §75-9-309.
  Chattel paper.
    Security interests in, §75-9-312.
  Collateral with security interest attached, debtor changes jurisdiction, §75-9-316.
  Continuity of perfection, §75-9-308.
    Change in governing law, §75-9-316.
    New debtor acquiring collateral, §75-9-316.
  Control.
    Perfection by, §75-9-314.
  Delivery to secured party.
    Perfection of security interest without filing, §75-9-313.
  Deposit accounts.
    Perfection by control, §75-9-314.
    Security interests in, §75-9-312.
  Documents.
    Security interests in, §75-9-312.
  Effect on delegation of performance and assignment of rights, §75-9-210.
  Electronic chattel paper.
    Perfection by control, §75-9-314.
  Filing.
    Not required to perfect security interest in property subject to certain statutes, regulations, and treaties, §75-9-311.
    Permissive filing, §75-9-312.
    When required, §75-9-310.
  Instruments.
    Security interests in, §75-9-312.
  Investment property.
    Perfection by control, §75-9-314.

SECURED TRANSACTIONS —Cont'd
Perfection of security interests —Cont'd
  Investment property —Cont'd
    Security interests in, §75-9-312.
  Law governing, §75-9-301.
    Agricultural liens, §75-9-302.
    Deposit accounts, §75-9-304.
    Goods covered by certificate of title, §75-9-303.
    Investment property, §75-9-305.
    Letter-of-credit rights, §75-9-306.
  Letter-of-credit rights.
    Law governing, §75-9-306.
    Perfection by control, §75-9-314.
    Security interests in, §75-9-312.
  Money.
    Security interests in, §75-9-312.
  Possession by secured party.
    Perfection of security interest without filing, §75-9-313.
  Treaties.
    Security interest in property subject to certain treaties, §75-9-311.
  When perfected, §75-9-308.
Place of business.
  Location of debtor, §75-9-307.
Preservation of collateral.
  Duty of secured party, §75-9-207.
Priority of security interests.
  Accessions, §75-9-335.
  Agricultural liens.
    Agricultural liens on same collateral, §75-9-322.
    Filed financing statement providing certain incorrect information.
      Agricultural lien perfected by, §75-9-338.
    Interests that take priority over or take free of, §75-9-317.
    Law governing, §75-9-302.
  Buyer of goods, §75-9-320.
  Certificate of title.
    Security interest in goods covered by, §75-9-337.
  Chattel paper or instrument.
    Priority of purchaser, §75-9-330.
  Claims prior to effective date, §75-9-709.
  Commingled goods, §75-9-336.
  Conflicting security interests, §75-9-322.
  Consignee.
    Rights and title with respect to creditors and purchasers, §75-9-319.

SECURED TRANSACTIONS —Cont'd
Priority of security interests —Cont'd
  Crops, §75-9-334.
  Deposit accounts, §75-9-327.
    Transfer of funds from, §75-9-332.
  Filed financing statement providing certain incorrect information.
    Security interest perfected by, §75-9-338.
  Financial asset.
    Priority of certain interests in, §75-9-331.
  Fixtures, §75-9-334.
  Future advances, §75-9-323.
  Investment property, §75-9-328.
  Law governing, §75-9-301.
    Agricultural liens, §75-9-302.
    Deposit accounts, §75-9-304.
    Goods covered by certificate of title, §75-9-303.
    Investment property, §75-9-305.
    Letter-of-credit rights, §75-9-306.
  Lessee of goods in ordinary course of business, §75-9-321.
  Letter-of-credit right, §75-9-329.
    Law governing, §75-9-306.
  Licensee of general intangible, §75-9-321.
  Liens arising by operation of law, §75-9-333.
  New debtor.
    Security interests created by, §75-9-326.
  Purchase-money security interests, §75-9-324.
  Purchasers of instruments, documents, and securities under other provisions.
    Priority of rights of, §75-9-331.
  Sale of right to payment, §75-9-318.
  Subordination.
    Priority subject to, §75-9-339.
  Transfer of money.
    Transferee takes money free of security interest, §75-9-332.
  Transferred collateral, §75-9-325.
  Unperfected security interest.
    Interests that take priority over or take free of, §75-9-317.
Proceeds.
  Rights of secured party in, §75-9-315.
Production-money security interests.
  Priority, §75-9-324A.
Purchase-money security interests, §75-9-103.
  Priority, §75-9-324.

SECURED TRANSACTIONS —Cont'd
Real property.
  Default, security agreement covering, procedure, §75-9-604.
Reasonable care.
  Duty of secured party to use, §75-9-207.
Recoupment against deposit account.
  Banks rights and duties, §75-9-340.
Registered organization.
  Filing statement, name of debtor, §75-9-503.
  Location, §75-9-307.
Restrictions on certain assignments, §75-9-406.
  Certain restrictions ineffective, §§75-9-408, 75-9-409.
Savings clause, §75-9-702.
  Transition provisions for 2013 amendments, §75-9-802.
Scope of provisions, §§75-9-109, 75-9-110.
Searching local records, transitional provisions, §75-9-710.
Security agreement.
  Effectiveness, §75-9-201.
Security or security entitlement.
  Attachment of security interest.
    Purchase or delivery of financial asset, §75-9-206.
  Control of investment property, §75-9-106.
  Description insufficient, §75-9-108.
  Law governing perfection or priority, §75-9-305.
  Priority of security interest in investment property, §75-9-328.
Set-off against deposit account.
  Banks rights and duties, §75-9-340.
Statement of account.
  Request regarding, §75-9-210.
Subordination.
  Priority subject to, §75-9-339.
This act, meaning of references, §75-9-701.
Torts of debtor.
  Secured party not obligated on, §75-9-402.
Transition provisions for 2013 amendments, §§75-9-801 to 75-9-809.
  Effective date, §75-9-801.

SECURED TRANSACTIONS —Cont'd
Transition provisions for 2013 amendments —Cont'd
  Effectiveness of action taken before July 1, 2013, §75-9-805.
  Initial financing statement.
    Amendment, §75-9-807.
    Filing before July 1, 2013, continued effectiveness, §75-9-806.
    Person who may file, §75-9-808.
  Pre-effective-date financing statement.
    Amendment, §75-9-807.
    Filing before July 1, 2013, continued effectiveness, §75-9-806.
  Priority of claims, §75-9-809.
  Savings clause, §75-9-802.
  Security interest perfected before July 1, 2013, §75-9-803.
  Security interest unperfected before July 1, 2013, §75-9-804.
Trusts and trustees.
  Filing statement, name of debtor, §75-9-503.

SETOFFS AND RECOUPMENT.
Secured transactions.
  Banks rights and duties, §75-9-340.

SUBORDINATION.
Commercial code.
  Secured transactions.
    Priority subject to, §75-9-339.

T

TORTS.
Secured transactions.
  Secured party not obligated in tort, §75-9-402.

TREES AND TIMBER.
Secured transactions.
  Law governing perfection and priority.
    Timber to be cut, §75-9-301.

TRUSTS AND TRUSTEES.
Secured transactions.
  Filing statement, name of debtor, §75-9-503.

U

UCC.
Secured transactions, §§75-9-101 to 75-9-710.

W

WELLS.
Secured transactions.
  Law governing perfection and priority.
    Location of wellhead, §75-9-301.